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12 CFR Part 226  
Truth in Lending; Final Rule

**FEDERAL RESERVE SYSTEM****12 CFR Part 226****[Regulation Z; Docket No. R-1393]****RIN 7100-AD55****Truth in Lending****AGENCY:** Board of Governors of the Federal Reserve System.**ACTION:** Final rule.

**SUMMARY:** On February 22, 2010 and June 29, 2010, the Board published in the *Federal Register* final rules amending Regulation Z's provisions that apply to open-end (not home-secured) credit plans, in each case in order to implement provisions of the Credit Card Accountability Responsibility and Disclosure Act of 2009. The Board believes that clarification is needed regarding compliance with certain aspects of the final rules. Accordingly, to facilitate compliance, the Board is further amending specific portions of the regulations and official staff commentary.

**DATES:** *Effective Date:* October 1, 2011. *Mandatory Compliance Date:* October 1, 2011. Creditors may, at their option, comply with this rule prior to October 1, 2011.

**FOR FURTHER INFORMATION CONTACT:** Stephen Shin, Attorney, or Amy Henderson or Benjamin K. Olson, Counsels, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, at (202) 452-3667 or 452-2412; for users of Telecommunications Device for the Deaf (TDD) only, contact (202) 263-4869.

**SUPPLEMENTARY INFORMATION:****I. Background***The Credit Card Act*

The Credit Card Accountability Responsibility and Disclosure Act of 2009 (Credit Card Act) was signed into law on May 22, 2009. Public Law 111-24, 123 Stat. 1734 (2009). The Credit Card Act primarily amended the Truth in Lending Act (TILA) and instituted a number of new substantive and disclosure requirements to establish fair and transparent practices pertaining to open-end consumer credit plans.

The requirements of the Credit Card Act that pertain to credit cards or other open-end credit for which the Board has rulemaking authority became effective in three stages. First, provisions generally requiring that consumers receive 45 days' advance notice of interest rate increases and significant changes in terms (TILA Section 127(i)) and provisions regarding the amount of

time that consumers have to make payments (TILA Section 163) became effective on August 20, 2009 (90 days after enactment of the Credit Card Act). A majority of the requirements under the Credit Card Act for which the Board has rulemaking authority, including, among other things, provisions regarding interest rate increases (TILA Section 171), over-the-limit transactions (TILA Section 127(k)), and student cards (TILA Sections 127(c)(8), 127(p), and 140(f)) became effective on February 22, 2010 (9 months after enactment). Finally, two provisions of the Credit Card Act addressing the reasonableness and proportionality of penalty fees and charges (TILA Section 149) and re-evaluation by creditors of rate increases (TILA Section 148) became effective on August 22, 2010 (15 months after enactment).

*Implementation of Credit Card Act*

The Board issued rules to implement the provisions of the Credit Card Act in stages, consistent with the statutory timeline established by Congress. On July 22, 2009, the Board published an interim final rule to implement the provisions of the Credit Card Act that became effective on August 20, 2009. *See* 74 FR 36077 (July 2009 Interim Final Rule). On January 12, 2010, the Board issued a final rule adopting in final form the requirements of the July 2009 interim final rule and implementing the provisions of the Credit Card Act that became effective on February 22, 2010. *See* 75 FR 7658 (February 2010 Final Rule). Independent of the Credit Card Act, this rule also incorporated the Board's comprehensive changes to the Regulation Z provisions applicable to open-end (not home-secured) credit, including amendments that affected all of the five major types of required disclosures: credit card applications and solicitations, account-opening disclosures, periodic statements, notices of changes in terms, and advertisements. Finally, on June 29, 2010, the Board published a final rule implementing the provisions of the Credit Card Act that became effective on August 22, 2010. *See* 75 FR 37526 (June 2010 Final Rule).

Since publication of the February 2010 and June 2010 Final Rules, the Board has become aware that clarification is needed to resolve confusion regarding how institutions must comply with particular aspects of those rules. In order to provide guidance and facilitate compliance with the final rules, the Board published proposed amendments to portions of the regulation and the accompanying staff commentary on November 2, 2010. *See*

75 FR 67458 (November 2010 Proposed Rule).

In response to the proposed rule, the Board received approximately 200 comment letters from members of Congress, credit card issuers and their employees, consumer groups and individual consumers, trade associations, and others. Based on a review of these comments and on its own analysis, the Board is adopting this final rule. The provisions of this rule are discussed in detail in Section III of this supplementary information. In the proposed rule, the Board encouraged commenters to limit their submissions to the issues addressed in the proposal, emphasizing that the purpose of this rulemaking is to clarify and facilitate compliance with the consumer protections contained in the February 2010 and June 2010 Final Rules, not to reconsider the need for—or the extent of—the protections in those rules. Accordingly, to the extent that commenters raised issues that are beyond the scope of the proposed rule, those issues are not addressed in this final rule.

**II. Statutory Authority**

In the supplementary information for the February 2010 and June 2010 Final Rules, the Board set forth the sources of its statutory authority under the Truth in Lending Act and the Credit Card Act. *See* 75 FR 7662 and 75 FR 37528. For purposes of this final rule, the Board continues to rely on this legal authority.

**III. Section-by-Section Analysis***Section 226.2 Definitions and Rules of Construction**2(a) Definitions**2(a)(15) Credit Card**2(a)(15)(ii) Credit Card Account Under an Open-End (Not Home-Secured) Consumer Credit Plan*

In the February 2010 Final Rule, the Board retained the pre-existing definition of “credit card” as any card, plate, or other single credit device that may be used from time to time to obtain credit. *See* § 226.2(a)(15)(i). However, the Board also added a new, somewhat narrower definition in order to implement the provisions of the Credit Card Act that apply to “credit card account[s] under an open end consumer credit plan.” Specifically, in a new § 226.2(a)(15)(ii), the Board defined “credit card account under an open-end (not home-secured) consumer credit plan” to mean any open-end credit account accessed by a credit card except: (1) A home-equity plan subject to the requirements of § 226.5b that is

accessed by a credit card; or (2) an overdraft line of credit that is accessed by a debit card. This term is generally used in the provisions of Regulation Z that implement the Credit Card Act.

The Board's February 2010 Final Rule declined requests from industry commenters to exempt all lines of credit accessed solely by an account number from the definition in § 226.2(a)(15)(ii), noting Congress' apparent intent that the Credit Card Act apply broadly to all products that meet the definition of "credit card." See 75 FR 7664–7665. However, the Board understands that this determination has caused uncertainty about whether *all* credit products accessed by an account number are subject to TILA's credit card provisions.

In particular, some institutions offer general purpose open-end lines of credit that are linked to a checking or other asset account with the same institution. The consumer can use the line's account number to request an extension of credit, which is then deposited into the asset account. The Board understands that there has been some confusion as to whether, in these circumstances, the account number is a "credit card" for purposes of § 226.2(a)(15)(i) and therefore a "credit card account under an open-end (not home-secured) consumer credit plan" for purposes of § 226.2(a)(15)(ii). Because most if not all credit accounts can be accessed in some fashion by an account number, the Board does not believe that Congress generally intended to treat account numbers that access a credit account as credit cards for purposes of TILA. However, the Board is concerned that, when an account number can be used to access an open-end line of credit to purchase goods or services, it would be inconsistent with the purposes of the Credit Card Act to exempt the line of credit from the protections provided for credit card accounts. For example, creditors may offer open-end credit accounts designed for online purchases that function like a traditional credit card account but can only be accessed using an account number. In these circumstances, the Board believes that TILA's credit card protections should apply.

Accordingly, the Board proposed to clarify the application of § 226.2(a)(15)(i) and (a)(15)(ii) to account numbers by amending comment 2(a)(15)–2, which provides illustrative examples of credit devices that are and are not credit cards. Specifically, the Board proposed to add an additional example clarifying that an account number that accesses a credit account is not a credit card, unless the account

number can access an open-end line of credit to purchase goods or services. The comment would further clarify that, if, for example, a creditor provides a consumer with an open-end line of credit that can be accessed by an account number in order to transfer funds into another account (such as an asset account with the same creditor), the account number is not a credit card for purposes of § 226.2(a)(15)(i). However, if the account number can also access the line of credit in order to purchase goods or services (such as an account number that can be used to purchase goods or services on the Internet), the account number is a credit card for purposes of § 226.2(a)(15)(i). Furthermore, if the line of credit can also be accessed by a card (such as a debit card or prepaid card), then that card is a credit card for purposes of § 226.2(a)(15)(i).

Consistent with this treatment of account numbers, the Board also proposed to amend § 226.2(a)(15)(ii)(B)—which currently excludes overdraft lines of credit accessed by a debit card from the definition of "credit card account under an open-end (not home-secured) consumer credit plan"—to also exclude overdraft lines of credit accessed by an account number (such as when a debit card number or checking account number is used to make an online purchase that overdraws the asset account). In addition, the Board proposed to adopt a new comment 2(a)(15)–4, which clarifies the test used for determining whether an account is a credit card account under an open-end (not home-secured) consumer credit plan for purposes of § 226.2(a)(15)(ii). Finally, for clarity and consistency, the Board proposed additional non-substantive revisions to the exception for home-equity plans in § 226.2(a)(15)(ii)(A).

Except as discussed below, the revisions to § 226.2(a)(15)(ii) and the commentary to § 226.2(a)(15) are adopted as proposed. While industry commenters generally supported or did not oppose this aspect of the proposal, comments from the prepaid card industry strongly objected to the reference to prepaid cards in the proposed example in comment 2(a)(15)–2. As discussed above, the Board's proposed amendments to comment 2(a)(15)–2 were intended to clarify § 226.2(a)(15)(i)'s definition of "credit card" with respect to account numbers that access lines of credit, not prepaid cards that access lines of credit. Accordingly, the Board has revised the proposed example in comment 2(a)(15)–2 to remove the specific reference to

prepaid cards. However, a prepaid card is a credit card for purposes of Regulation Z if it falls within the general definition of "credit card" set forth in § 226.2(a)(15) and the accompanying commentary.

Consumer group commenters objected to the proposed revisions to comment 2(a)(15)–2, which could—in their view—create an incentive for creditors to develop new products designed to circumvent the Credit Card Act. However, the proposed revisions are intended to prevent circumvention by clarifying that an account number that accesses an open-end line of credit to purchase goods or services is generally treated as a credit card for purposes of Regulation Z. To the extent that additional products emerge that raise concerns regarding circumvention, further revisions to Regulation Z may be appropriate. Nevertheless, the Board has revised comment 2(a)(15)–2 to clarify that, when an account number can access an open-end line of credit to purchase goods or services, a creditor cannot evade Regulation Z's credit card provisions by treating the purchases as cash advances or as some other type of transaction.

#### *2(a)(15)(iii) Charge Card*

The Board understands that there has been some confusion as to whether a charge card is a "credit card account under an open-end (not home-secured) consumer credit plan," as defined in § 226.2(a)(15)(ii). Section 226.2(a)(15)(iii) defines a "charge card" as a credit card on an account for which no periodic rate is used to compute a finance charge. The Board has historically applied the same requirements to credit and charge cards, unless otherwise stated. See § 226.2(a)(15); comment 2(a)(15)–3. Therefore, as discussed in the February 2010 Final Rule, the Board adopted a similar approach when implementing the provisions of the Credit Card Act. See 75 FR 7672–7673. Nevertheless, for clarity and consistency, the Board proposed to amend comment 2(a)(15)–3 to state that references to a credit card account under an open-end (not home-secured) consumer credit plan in Subpart B (Open-End Credit) and Subpart G (Special Rules Applicable to Credit Card Accounts and Open-End Credit Offered to Students) include charge cards unless otherwise stated.

The Board also proposed to update the list of provisions in comment 2(a)(15)–3 that distinguish charge cards from credit cards. In addition, the Board proposed to remove the statement in the comment that, when the term "credit card" is used in the listed provisions, it

refers to credit cards other than charge cards. While generally accurate, this statement may be overbroad in certain circumstances. For example, the exemption in § 226.7(b)(12)(v)(A) and the safe harbor in § 226.52(b)(1)(ii)(C) are limited to charge card accounts that require payment of outstanding balances in full at the end of each billing cycle. Accordingly, the applicability of a particular provision should be determined based on a review of that provision and the relevant staff commentary.

The Board did not receive significant comment on the proposed revisions to comment 2(a)(15)–3. Accordingly, that comment is revised as proposed.

### *Section 226.5 General Disclosure Requirements*

#### *5(b) Time of Disclosures*

##### *5(b)(2) Periodic Statements*

Prior to enactment of the Credit Card Act, TILA Section 163 generally required creditors to send periodic statements for open-end consumer credit plans at least 14 days before the expiration of any period within which any credit extended may be repaid without incurring a finance charge (*i.e.*, a “grace period”). See 15 U.S.C. 1666b (2008). The Board’s Regulation Z, however, extended this 14-day requirement to apply even if no grace period was provided. Specifically, prior to the 2009 amendments implementing the Credit Card Act, § 226.5(b)(2)(ii) required that creditors mail or deliver periodic statements at least 14 days before the date by which payment was due for purposes of avoiding not only finance charges as a result of the loss of a grace period but also any other charges (such as late payment fees). See also former comment 5(b)(2)(ii)–1 (2008). Thus, before the Credit Card Act, creditors were generally required to provide consumers with at least 14 days to make payments for all open-end consumer credit accounts.

Effective August 20, 2009, the Credit Card Act amended TILA Section 163 to generally prohibit a creditor from treating a payment as late or imposing additional finance charges with respect to open-end consumer credit plans unless the creditor mailed or delivered the periodic statement at least 21 days before the payment due date and the expiration of any grace period. See Credit Card Act § 106(b)(1). The Board’s July 2009 interim final rule made corresponding amendments to § 226.5(b)(2)(ii) and the accompanying official staff commentary. See 74 FR 36077 (July 22, 2009). Because amended TILA 163 required that periodic

statements be mailed at least 21 days before the payment due date for all open-end consumer credit accounts even if no grace period was provided, the amendments to § 226.5(b)(2)(ii) removed the pre-existing 14-day requirement as unnecessary.

However, in November 2009, the Credit CARD Technical Corrections Act of 2009 (Technical Corrections Act) further amended TILA Section 163. Pub. L. 111–93, 123 Stat. 2998 (Nov. 6, 2009). The Technical Corrections Act narrowed the requirement in TILA Section 163(a) that statements be mailed or delivered at least 21 days before the payment due date to apply only to credit card accounts, rather than to all open-end consumer credit plans. However, open-end consumer credit plans that provide a grace period remain subject to the 21-day requirement in TILA Section 163(b). In its February 2010 Final Rule, the Board narrowed the application of § 226.5(b)(2)(ii) for consistency with the Technical Corrections Act. However, in doing so, the Board inadvertently failed to reinsert the 14-day requirement for open-end consumer credit plans without a grace period.

The Board believes that it would be inconsistent with the purposes of the Credit Card Act for consumers to receive less time to make payments after its implementation than they did beforehand. Accordingly, pursuant to its authority under Section 105(a) of TILA and Section 2 of the Credit Card Act, the Board proposed to amend § 226.5(b)(2)(ii) to reinsert the 14-day requirement for open-end consumer credit plans that are not subject to the Credit Card Act’s 21-day requirements.

Specifically, the Board proposed to revise § 226.5(b)(2)(ii) to provide that, in these circumstances, the creditor must adopt reasonable procedures designed to ensure that: (1) Periodic statements are mailed or delivered at least 14 days prior to the date on which the required minimum periodic payment must be made to avoid being treated as late; and (2) payments received on or prior to that date are not treated as late for any purpose. The Board also proposed corresponding revisions to the commentary to § 226.5(b)(2)(ii). Comments from industry and consumer groups supported these revisions, which are generally adopted as proposed. However, based on further analysis the Board has revised § 226.5(b)(2)(ii)(B) to clarify that the 14-day requirement applies regardless of whether a grace period applies to the account. In other words, the fact that a grace period applies to an account does not permit the creditor to treat a payment as late

during the 14-day period, even if that payment does not satisfy the requirements of the grace period.

The Board also proposed to delete comment 5(b)(2)(iii)–1, which provided guidance regarding the pre-Credit Card Act versions of TILA Section 163 and § 226.5(b)(2) and was inadvertently retained in the February 2010 Final Rule. Prior to enactment of the Credit Card Act, TILA Section 163(b) stated that the 14-day mailing requirement did not apply “in any case where a creditor has been prevented, delayed, or hindered in making timely mailing or delivery of [the] periodic statement within the time specified \* \* \* because of an act of God, war, natural disaster, strike, or other excusable or justifiable cause. \* \* \*” Comment 5(b)(2)(iii)–1 clarified that these exceptions did not extend to the failure to provide a periodic statement because of a computer malfunction. Consumer groups opposed the deletion of this comment, arguing that the Board should reaffirm that a computer malfunction never excuses a creditor from providing periodic statements in a timely manner.

The Credit Card Act and the Board’s final rules replaced the exceptions in TILA Section 163(b) with a requirement that creditors adopt “reasonable procedures” for ensuring that periodic statements are mailed or delivered consistent with the appropriate timelines. In the February 2010 Final Rule, the Board noted that the Credit Card Act’s removal of the statutory exceptions was consistent with the adoption of a “reasonable procedures” standard insofar as a creditor’s procedures for responding to any of the situations listed in prior TILA Section 163(b) will now be evaluated for reasonableness. See 75 FR 7667. Similarly, the Board believes that it is appropriate to evaluate a creditor’s procedures for responding to a computer malfunction for reasonableness. Accordingly, the final rule deletes comment 5(b)(2)(iii)–1.

### *Section 226.5a Credit and Charge Card Applications and Solicitations*

#### *5a(b) Required Disclosures*

##### *5a(b)(1) Annual Percentage Rate*

##### *Limitations on Rate Decreases*

Section 226.5a(b)(1) requires that the tabular disclosure provided with credit and charge card applications and solicitations state each periodic rate that may be used to compute the finance charge on an outstanding balance for purchases, a cash advance, or a balance transfer, expressed as an annual percentage rate. Section 226.5a(b)(1)(i)

clarifies this disclosure requirement when a rate is a variable rate. In part, § 226.5a(b)(1)(i) provides that a card issuer may not disclose any applicable limitations on rate increases or decreases in the table.

Section 226.55 sets forth limitations on rate increases applicable to credit card accounts under an open-end (not home-secured) consumer credit plan. Section 226.55(b)(2) provides that a card issuer may increase an annual percentage rate when (1) the rate varies according to an index that is not under the card issuer's control and is available to the general public, and (2) the rate increase is due to an increase in that index. In the February 2010 Final Rule, the Board adopted comment 55(b)(2)-2 that clarified that a card issuer exercises control over the operation of an index if the variable rate based on that index is subject to a fixed minimum rate or similar requirement that does not permit the variable rate to decrease consistent with reductions in the index.

In November 2010, the Board proposed to amend § 226.5a(b)(1)(i) for conformity with comment 55(b)(2)-2. The Board is aware that, as a practical matter, § 226.55(b)(2) and comment 55(b)(2)-2 preclude card issuers from imposing a variable rate that is subject to a fixed minimum rate. Accordingly, the Board proposed to delete as unnecessary language in § 226.5a(b)(1)(i) providing that a card issuer may not disclose any applicable limitations on rate decreases in the table. The Board received no comment on this change, which is adopted as proposed.

In the supplementary information to the November 2010 Proposed Rule, the Board noted that § 226.6(b)(2)(i)(A) contains analogous language regarding limitations on rate decreases. However, § 226.55(b)(2) applies only to credit card accounts under an open-end (not home-secured) consumer credit plan while § 226.6(b) applies to all open-end (not home-secured) credit. Therefore, the Board did not propose to delete the reference to limitations on rate decreases from § 226.6(b)(2)(i)(A). *But see* § 226.9(c)(2)(v)(C) regarding the notice requirements that apply to an open-end (not home-secured) plan with a variable rate that is subject to a fixed minimum rate.

#### Loss of Employee Preferential Rates

If a rate may increase as a penalty for one or more events specified in the account agreement, § 226.5a(b)(1)(iv) requires that the card issuer disclose the increased rate that may apply, a brief description of the event or events that may result in the increased rate, and a brief description of how long the

increased rate will remain in effect. This disclosure generally must appear in the § 226.5a table; however, § 226.5a(b)(1)(iv)(B) provides that, for introductory rates as defined in § 226.16(g)(2)(ii), the card issuer must briefly disclose directly beneath the table the circumstances, if any, under which the introductory rate may be revoked, and the type of rate that will apply after the introductory rate is revoked. The Board adopted this format requirement for the disclosure regarding loss of an introductory rate in part due to concerns that including this information in the tabular disclosure could lead to "information overload." *See* 74 FR 5244, 5286.

The Board noted in the November 2010 Proposed Rule that some issuers may offer preferential or reduced rates at account opening that are not "introductory rates" as defined in § 226.16(g)(2)(ii). For example, an issuer may offer a preferential rate to its employees. Eligibility for the preferential or reduced rate is conditioned upon the consumer's continued employment with the issuer. Accordingly, if the consumer's employment is terminated, the contract provides that the rate will increase from the reduced preferential rate to a higher rate, such as the standard rate on the account.<sup>1</sup>

In the November 2010 Proposed Rule, the Board proposed to adopt a new § 226.5a(b)(1)(iv)(C), which would require that disclosures regarding the loss of an employee preferential rate be placed directly below the tabular disclosure. Proposed § 226.5a(b)(1)(iv)(C) generally mirrored § 226.5a(b)(1)(iv)(B) and provided that if a card issuer discloses in the table a preferential annual percentage rate for which only employees of the creditor or employees of a third party are eligible, the card issuer must briefly disclose directly beneath the table the circumstances under which such preferential rate may be revoked, and the rate that will apply after such preferential rate is revoked. The Board also proposed a new § 226.6(b)(2)(i)(D)(3) that would mirror proposed § 226.5a(b)(1)(iv)(C) and would require that brief disclosures regarding the loss of an employee preferential rate be placed directly below the tabular disclosure provided at account opening. The Board also proposed conforming amendments to the formatting requirements set forth in

§§ 226.5a(a)(2)(iii) and 226.6(b)(1)(ii). For ease of reference, this section of supplementary information addresses both proposed § 226.5a(b)(1)(iv)(C) and § 226.6(b)(2)(i)(D)(3).

The Board also proposed a new comment 5a(b)(1)-5.iv to provide guidance regarding the disclosure below the table of the circumstances under which an employee preferential rate may be revoked. Proposed comment 5a(b)(1)-5.iv generally mirrored relevant portions of the guidance set forth in comment 5a(b)(1)-5.ii regarding the revocation of introductory rates. In addition, proposed comment 5a(b)(1)-5.iv clarified that the description of the circumstances in which an employee preferential rate could be revoked should be brief. For example, if an issuer may increase an employee preferential rate based upon termination of the employee's employment relationship with the issuer or a third party, the proposed comment clarified that an issuer may describe this circumstance as "if your employment with [issuer or third party] ends."

Several industry commenters expressed concerns that the proposal would add new disclosure requirements for employee preferred rates. One commenter stated that when a creditor offers an employee rate it is not usually disclosed in the tabular disclosures provided pursuant to §§ 226.5a and 226.6(b). This commenter stated that the tabular disclosures are drafted for general use and, if an employee applies, the account terms are subsequently amended to provide for the employee preferred rate. The commenter asked the Board to clarify that the proposal would not require creditors to disclose employee preferential rates in the tables provided pursuant to §§ 226.5a and 226.6(b). Two other industry commenters expressed concerns that the proposal would require a new disclosure to be included in application and account-opening disclosures relating to the potential loss of an employee preferred rate. These commenters argued that such disclosure requirements, particularly when paired with the advance notice requirements of § 226.9 and the limitations on rate increases in § 226.55, could result in reduced availability of beneficial employee rate programs, because issuers would be required to provide special disclosures to employees who receive preferred employee rates, while at the same time the advance notice requirements and limitations on rate increases would apply when the consumer's employment ends. These commenters recommended that the temporary rate exception be expanded

<sup>1</sup>The Board notes that 45 days' advance notice is required pursuant to § 226.9(g) prior to imposition of the higher rate. *See* 74 FR 5346. In addition, the limitations set forth in § 226.55 apply.

to permit issuers to increase rates, or fees where appropriate, based on termination of a consumer's employment, without being subject to 45-day advance notice or the limitations in § 226.55.

The Board notes that proposed §§ 226.5a(b)(1)(iv)(C) and 226.6(b)(2)(i)(D)(3) were not intended to impose any new disclosure requirements regarding employee preferential rates, but were rather intended to clarify the placement requirements for disclosures that are already required under Regulation Z. Sections 226.5a(b)(1) and 226.6(b)(2)(i) currently require disclosure of each periodic rate that may be used to compute the finance charge on an outstanding balance for purchases, a cash advance, or a balance transfer. Thus, the Board believes that under current Regulation Z requirements, employee preferential rates must be included in the tabular disclosures provided pursuant to §§ 226.5a and 226.6(b), if they are, or will be, included in the initial account agreement.<sup>2</sup> In addition, §§ 226.5a(b)(1)(iv)(A) and 226.6(b)(2)(i)(D) currently require that certain additional disclosures be provided if a rate may increase as a penalty for one or more events specified in the account agreement. As stated in the supplementary information to its final rule published on January 29, 2009, the Board believes that an increase in rate due to the termination of a consumer's employment is a type of rate increase as a penalty, even if the circumstances under which the change may occur are set forth in the account agreement. See 74 FR 5244, 5346 (January 2009 Final Rule). Accordingly, the Board believes that §§ 226.5a(b)(1)(iv)(A) and 226.6(b)(2)(i)(D) currently require disclosures regarding the revocation of an employee preferential rate that is offered at account opening.

The Board noted in the proposal that the proposed placement requirement would be appropriate in order to prevent "information overload" and to focus consumers' attention on the disclosures that they find the most important. The Board continues to believe that it is appropriate to require that disclosures regarding the revocation of an employee preferential rate be provided with the tabular disclosures provided with credit card applications

<sup>2</sup> If an employee preferential rate is not included in the initial account agreement, but is instead added by an amendment to the agreement after account opening, such a rate is not required to be disclosed in the tabular disclosures pursuant to §§ 226.5a and 226.6(b). But see § 226.9(c)(2) and (g) for other disclosure requirements that may apply.

and solicitations and at account opening. However, the Board is concerned that including this information, which is likely relevant only to a limited subset of consumers, in the tabular disclosure may distract other consumers from other key disclosures. Accordingly, the Board is adopting §§ 226.5a(b)(1)(iv)(C) and 226.6(b)(2)(i)(D)(3) generally as proposed.

One industry commenter stated that the Board also should apply proposed §§ 226.5a(b)(1)(iv)(C) and 226.6(b)(2)(i)(D)(3) to situations in which a preferential rate is offered to a bank's insiders, such as executive officers, directors, or principal shareholders. The commenter noted that applicable regulations may permit preferential rates to be offered to such individuals, but that such preferential rates might not be covered by proposed §§ 226.5a(b)(1)(iv)(C) and 226.6(b)(2)(i)(D)(3) because insiders such as executive officers, directors, or principal shareholders are not employees of the creditor. The Board believes that it is appropriate to extend the guidance in §§ 226.5a(b)(1)(iv)(C) and 226.6(b)(2)(i)(D)(3) to apply to individuals who, while not technically employees of the card issuer or third party, have a similar affiliation to such entities. The Board believes that, as with employee preferential rates, requiring that disclosures regarding the revocation of preferential rates offered to such insiders be placed in the tabular disclosure may distract some consumers from other key disclosures and contribute to information overload. Thus, as adopted, §§ 226.5a(b)(1)(iv)(C) and 226.6(b)(2)(i)(D)(3) would apply if a card issuer or creditor discloses in the table a preferential annual percentage rate for which only employees of the card issuer or creditor, employees of a third party, or other individuals with similar affiliations with the card issuer, creditor, or third party, such as executive officers, directors, or principal shareholders, are eligible.

Consumer group commenters agreed with the Board's statement that termination of an employee preferential rate is not a promotional rate but is in fact a contingent rate increase. These commenters supported the inclusion of footnote 1 in the supplementary information to the proposal, which noted that 45 days' advance notice is required pursuant to § 226.9(g) prior to imposition of a higher rate upon loss of an employee promotional rate and that the limitations set forth in § 226.55 apply to the rate increase. Consumer groups requested that the substance of this footnote be incorporated into the

commentary and that comment 55(b)(1)–4 be amended to expressly prohibit application of a rate increase due to loss of an employee preferential rate to existing balances on the account. For the reasons stated in the supplementary information to the January 2009 Final Rule and February 2010 Final Rule, the Board believes that rate increases that occur upon expiration of an employee preferential rate should continue to be subject to the advance notice requirements of § 226.9(g) and the substantive limitations in § 226.55. See, e.g., 74 FR 5346, 75 FR 7736. However, the Board believes that Regulation Z already clearly provides that rate increases upon loss of an employee preferential rate require 45 days' advance notice under § 226.9(g) and are subject to the limitations in § 226.55.

Proposed §§ 226.5a(b)(1)(iv)(C) and 226.6(b)(2)(i)(D)(3) would have applied only to loss of employee preferential rates. The Board solicited comment on whether there are other types of preferential or reduced rates that are not introductory rates as defined in § 226.16(g)(2)(ii) but for which similar treatment under § 226.5a would be appropriate. Several industry commenters identified other scenarios in which creditors or card issuers may offer preferred rates that do not meet the definition of "introductory rates" in § 226.16(g)(2)(ii). For example, an issuer or creditor may offer preferred rates for making payments automatically via electronic recurring payments or payroll deduction. Other creditors may offer preferred rates as relationship rewards, for example for maintaining a deposit account with the creditor or for maintaining a minimum balance in a deposit account with the creditor. If the consumer fails to continue to meet the conditions associated with the preferential rate, the preferential rate will be revoked and a higher rate will be imposed.<sup>3</sup>

At this time, the Board is not extending the guidance in §§ 226.5a(b)(1)(iv)(C) and 226.6(b)(2)(i)(D)(3) to address the loss of preferred rates offered in other circumstances, such as preferred rates offered to consumers who make automatic payments or preferred rates otherwise offered as relationship rewards. Unlike employee preferential rates, which are likely relevant only to a subset of an issuer or creditor's

<sup>3</sup> Similar to employee preferential rates, the Board notes that 45 days' advance notice is required pursuant to § 226.9(g) prior to imposition of the higher rate when the consumer ceases to meet the conditions for such preferential rates. In addition, the limitations set forth in § 226.55 apply.

consumers, the Board believes that relationship rewards or a discount for making automatic payments may be relevant to a much larger portion of a creditor's customer base. In addition, the Board believes that creditors may be more likely to market credit products on the basis of preferred rates based on automatic payments or other relationship rewards than on the basis of discounted rates that are available only if the consumer is employed with the creditor or another specific third party. Accordingly, the Board is concerned that permitting disclosures regarding the loss of preferential rate programs made available to the general public, such as those based upon automatic payments or as other types of relationship rewards, to be placed below the §§ 226.5a and 226.6 tables may detract from consumers' awareness and understanding of the circumstances under which such preferred rates can be terminated by the creditor.

#### Disclosure of How Long a Penalty Rate Will Remain in Effect

If a rate may increase as a penalty for one or more events specified in the account agreement, § 226.5a(b)(1)(iv) requires that the card issuer disclose the increased rate that may apply, a brief description of the event or events that may result in the increased rate, and a brief description of how long the increased rate will remain in effect. The Board understands that, in light of several provisions of the Credit Card Act, there is confusion regarding how issuers must disclose the period for which the penalty rate will remain in effect. The Board understands that historically some issuers' card agreements provided that penalty rates, once triggered, could remain in effect indefinitely. However, the enactment of the Credit Card Act established certain circumstances in which a card issuer must reduce the rate even after penalty pricing has been triggered. In particular, § 226.55(b)(4) requires a card issuer to reduce a rate that was raised based upon a delinquency of more than 60 days, if the consumer makes the first six required minimum payments on time following the effective date of the rate increase. In addition, § 226.59 requires a card issuer to periodically review accounts on which a rate increase has been imposed and, where appropriate based on the review, reduce the rate applicable to the account.

As a consequence of §§ 226.55(b)(4) and 226.59, the Board understands that it may be unclear how issuers should disclose the duration for which a penalty rate will be in effect, for example if the contract provides that the

penalty rate may remain in effect indefinitely, except to the extent otherwise required by §§ 226.55(b)(4) and 226.59. Accordingly, the Board proposed to amend comment 5a(b)(1)–5.i to clarify that a card issuer may not disclose in the table any limitations imposed by §§ 226.55(b)(4) and 226.59 on the duration of increased rates. Proposed comment 5a(b)(1)–5.i set forth two examples. First, the proposed comment provided that if a card issuer reserves the right to apply the increased rate to any balances indefinitely, the issuer should disclose that the penalty rate may apply indefinitely, even though §§ 226.55(b)(4) and 226.59 may impose limitations on the continued application of a penalty rate to certain balances. The second example provided that if the issuer generally provides that the increased rate will apply until the consumer makes twelve timely consecutive required minimum periodic payments, the issuer should disclose that the penalty rate will apply until the consumer makes twelve consecutive timely minimum payments, even though §§ 226.55(b)(4) and 226.59 may impose limitations on the continued application of a penalty rate to certain balances.<sup>4</sup>

One industry commenter supported the proposed changes to comment 5a(b)(1)–5.i. However, two other industry commenters expressed concerns regarding this aspect of the proposal. These commenters stated that comment 5a(b)(1)–5.i could contribute to consumer confusion and reduce a card issuer's incentive to implement practices that are more beneficial to consumers than the minimum requirements of Regulation Z. The commenters expressed concern that if an issuer discloses a practice that is more beneficial to consumers than the requirements of §§ 226.55(b)(4) and 226.59—for example, that the issuer will lower the rate if the consumer makes three consecutive timely minimum payments—consumers will assume that the disclosed practice is detrimental to their interests.

The Board notes that § 226.5a(b)(1)(iv) requires issuers to disclose a brief description of how long a penalty rate will remain in effect. While the proposed clarification provided that a card issuer may not disclose in the table any limitations imposed by §§ 226.55(b)(4) and 226.59 on the duration of increased rates, § 226.5a(b)(1)(iv) nonetheless requires a

<sup>4</sup> The Board notes that the second example in proposed comment 5a(b)(1)–5.i erroneously referred to § 226.54(b)(4) instead of § 226.55(b)(4). This typographical error has been corrected in the final rule.

card issuer to provide a disclosure regarding the duration of penalty rates. For example, if an issuer's account agreement generally provides for no automatic cure for penalty rates (except as required pursuant to § 226.55(b)(4)), the issuer would be required to disclose that the penalty rate may remain in effect indefinitely. Similarly, if the account agreement provides for a more advantageous cure for penalty rates than is required pursuant to § 226.55(b)(4), for example that penalty rates will be reduced if the consumer makes three consecutive timely payments, the issuer would disclose that fact. Accordingly, the Board believes that consumers will be able to compare the practices of different issuers and that a disclosure of an automatic penalty pricing cure based upon three consecutive timely payments will compare favorably with the disclosure provided by an issuer who offers no cure for penalty pricing except to the extent required under §§ 226.55(b)(4) and 226.59.

Accordingly, the Board is adopting the changes to comment 5a(b)(1)–5.i as proposed. The Board believes more complex disclosures explaining the applicability of the rules in §§ 226.55(b)(4) and 226.59 would be confusing to consumers, and would be of limited assistance in shopping for credit, given that those provisions apply to all issuers. In addition, consumers to whose accounts the cure right under § 226.55(b)(4) applies will be notified of that right when they receive a notice under § 226.9(c)(2) or (g) disclosing the associated rate increase.

#### Other Amendments to § 226.5a(b)(1)

The Board also proposed an amendment to comment 5a(b)(1)–5.ii to correct a technical error. As discussed above, pursuant to § 226.5a(b)(1)(iv)(B), information regarding the revocation of an introductory rate is required to be disclosed directly beneath the table. Comment 5a(b)(1)–5.ii, which discusses the disclosures regarding the revocation of an introductory rate, contained an erroneous reference to a disclosure *in*, rather than *beneath*, the table. Accordingly, the Board proposed a technical amendment to comment 5a(b)(1)–5.ii for conformity with the placement requirements in § 226.5a(b)(1)(iv)(B). The Board received no comments on this technical correction, which is adopted as proposed.

#### 5a(b)(2) Fees for Issuance or Availability

Comment 5a(b)(2)–4 states that, if fees required to be disclosed are waived or reduced for a limited time, the introductory fees or the fact of fee

waivers may be disclosed in the table in addition to the required fees if the card issuer also discloses how long the reduced fees or waivers will remain in effect. For the reasons discussed below, the Board has revised this comment to clarify that the card issuer must comply with the disclosure requirements in §§ 226.9(c)(2)(v)(B) and 226.55(b)(1).

#### *5a(b)(5) Grace Period*

Section 226.5a(b)(5) requires that the tabular disclosure provided with credit and charge card applications and solicitations state the date by which or the period within which any credit extended for purchases may be repaid without incurring a finance charge due to a periodic interest rate and any conditions on the availability of the grace period. If no grace period is provided, that fact must be disclosed.

Comment 5a(b)(5)–1 states that an issuer that offers a grace period on all purchases and conditions the grace period on the consumer paying his or her outstanding balance in full by the due date each billing cycle, or on the consumer paying the outstanding balance in full by the due date in the previous and/or the current billing cycle(s) will be deemed to meet the requirements in § 226.5a(b)(5) by providing the following disclosure, as applicable: “Your due date is [at least] \_\_\_ days after the close of each billing cycle. We will not charge you any interest on purchases if you pay your entire balance by the due date each month.” This model language was developed through extensive consumer testing.

In the February 2010 Final Rule, the Board adopted comment 5a(b)(5)–4, which clarifies that § 226.5a(b)(5) does not require a card issuer to disclose the limitations on the imposition of finance charges in § 226.54. Implementing the Credit Card Act, § 226.54 provides that, when a consumer pays some but not all of the balance subject to a grace period prior to the expiration of the grace period, the card issuer is prohibited from imposing finance charges on the portion of the balance paid. In adopting comment 5a(b)(5)–4, the Board was concerned that the inclusion of language attempting to describe the limitations set forth in § 226.54 could reduce the effectiveness of the grace period disclosure in the table. The Board also stated its belief that a disclosure of the limitations set forth in § 226.54 is not necessary insofar as the model language set forth in comment 5a(b)(5)–1 accurately states that a consumer generally will not be charged any interest on purchases if the entire balance is paid by the due date each

month. Thus, although § 226.54 limits the imposition of finance charges if the consumer pays less than the entire balance shown on the periodic statement, the model language achieves its intended purpose of explaining succinctly how a consumer can avoid all interest charges on purchases.

Many issuers offer a grace period on all purchases under which no interest will be charged on purchases shown on a periodic statement if a consumer pays his or her outstanding balance shown on the periodic statement in full by the due date in the previous and/or the current billing cycle(s). Many of these issuers are using the model language set forth in comment 5a(b)(5)–1, or substantially similar language, to describe the grace period and the conditions on its availability. Nonetheless, other issuers have chosen not to use the model language set forth in comment 5a(b)(5)–1, even though the issuers would be permitted to do so. Some of the issuers that have chosen not to use the model language are disclosing the grace period in more technical detail, including a discussion of the limitations on imposition of finance charges under § 226.54, and the impact of payment allocation on whether interest will be charged on purchases due to the loss of a grace period. Other issuers are including detailed language to explain the conditions on the grace period, such as an explanation that the consumer will not be charged any interest on new purchases, or any portion of a new purchase, paid by the due date on the consumer’s current billing statement if the consumer paid his or her entire balance on the previous billing statement in full by the due date on that statement.

Thus, in the November 2010 Proposed Rule, the Board proposed to revise comment 5a(b)(5)–1 to clarify that issuers must not disclose in the table required by § 226.5a the limitations on the imposition of finance charges as a result of a loss of a grace period in § 226.54, or the impact of payment allocation on whether interest is charged on purchases as a result of a loss of a grace period. However, issuers would not have been prohibited from disclosing this information outside the table. Comment 5a(b)(5)–4, which states that card issuers are not required to disclose the limitations set forth in § 226.54, would have been deleted. As discussed above, the Board believed the inclusion of language attempting to describe the limitations set forth in § 226.54 or the impact of payment allocation on whether interest will be charged on purchases due to the loss of a grace period could reduce the

effectiveness of the grace period disclosure in the table.

In addition, the Board proposed to revise comment 5a(b)(5)–1 to clarify that, for purposes of the tabular disclosures required by § 226.5a, certain issuers must use the disclosure language set forth in proposed comment 5a(b)(5)–1. Specifically, proposed comment 5a(b)(5)–1 noted that some issuers may offer a grace period on all purchases under which interest will not be charged on purchases if the consumer pays the outstanding balance shown on a periodic statement in full by the due date shown on that statement for one or more billing cycles. The proposed comment would have clarified that in these circumstances, § 226.5a(b)(5) requires that the issuer disclose the grace period and the conditions for its applicability using the following language, or substantially similar language, as applicable: “Your due date is [at least] \_\_\_ days after the close of each billing cycle. We will not charge you any interest on purchases if you pay your entire balance by the due date each month.” As discussed above, this disclosure language was developed through extensive consumer testing, and the Board believed this disclosure language achieves its intended purpose of explaining succinctly how a consumer can avoid all interest charges on purchases.

The Board recognized that some issuers may structure their grace periods differently than as described above, and the disclosure language described above may not be accurate for those issuers. Proposed comment 5a(b)(5)–1 noted that some issuers may offer a grace period on all purchases under which interest may be charged on purchases even if the consumer pays the outstanding balance shown on a periodic statement in full by the due date shown on that statement each billing cycle. As an example, the proposal noted that an issuer may charge interest on purchases if the consumer uses the account for a cash advance, regardless of whether the outstanding balance shown on the periodic statement is paid in full by the due date shown on that statement. In these circumstances, proposed comment 5a(b)(5)–1 clarified that § 226.5a(b)(5) requires the issuer to amend the above disclosure language to describe accurately the conditions on the applicability of the grace period. Nonetheless, under the proposal, these issuers in disclosing the grace period and the conditions on its availability in the § 226.5a table still would not have been allowed to disclose the limitations on the imposition of finance charges as a result of a loss of a grace period in



§ 226.54, or the impact of payment allocation on whether interest is charged on purchases as a result of a loss of a grace period.

Consumer group commenters objected to the proposed example in comment 5a(b)(5)–1, arguing that, when a consumer pays the outstanding balance shown on a periodic statement in full by the due date shown on that statement, a card issuer should not be permitted to charge interest on purchases based on the consumer's use of the account for a cash advance. As discussed below, these commenters requested that the Board ban this and other issuer practices related to grace periods using its authority under the Federal Trade Commission Act (FTC Act). In revising comment 5a(b)(5)–1, the Board intended to clarify the requirements for disclosing grace periods, not to opine on whether particular grace period practices are permissible. Accordingly, the final version of comment 5a(b)(5)–1 does not include the proposed example.

One industry commenter opposed the proposed modifications to comment 5a(b)(5)–1 that would prohibit a card issuer from disclosing in the table any limitations on the imposition of finance charges as a result of a loss of a grace period in § 226.54, or the impact of payment allocation on whether interest is charged on purchases as the result of a loss of a grace period. The commenter believes the impact of payment allocation on whether interest is charged on purchases as the result of a loss of a grace period is very important information for an applicant attempting to determine the cost of a credit program based on how they intend to use various features of the account. For example, if a customer must pay one credit feature in full (due to payment allocation requirements) before payments are applied to a second credit feature nearing the end of its grace period, the commenter believed that the consumer should be alerted to such a situation in the table because it could require a significant commitment of resources by the consumer to avoid paying interest on the second credit feature. The commenter requested that the Board adopt model language that would address this situation, such as the following language: "We will not charge you interest if you pay the full balance of credit feature 1 and any balance in credit feature 2 in full by the due date each billing period."

Except as discussed above, comment 5a(b)(5)–1 is adopted as proposed. As noted earlier, the Board believes the inclusion of language attempting to describe the limitations set forth in § 226.54 or the impact of payment

allocation on whether interest will be charged on purchases due to the loss of a grace period could reduce the effectiveness of the grace period disclosure in the table. Under comment 5a(b)(5)–1, an issuer must use the following language to describe the grace period as applicable: "Your due date is [at least] \_\_\_ days after the close of each billing cycle. We will not charge you any interest on purchases if you pay your entire balance by the due date each month." This language achieves its intended purpose of explaining succinctly how a consumer can avoid all interest charges on purchases, namely by paying the entire balance by the due date each month.

*Ban on certain types of grace periods.* In response to the November 2010 Proposed Rule, several consumer groups requested that the Board develop model language for different types of grace periods and require the use of such model language for all issuers. In addition, the consumer groups requested that the Board use its authority under the FTC Act to limit issuers to the types of grace period for which there is model language. These consumer groups believe that some issuers are making grace period disclosures, and structuring grace periods themselves, in a manner that is confusing, deceptive, or unfair. In the November 2010 Proposed Rule, the Board did not propose to use its FTC Act authority to ban issuers from using certain types of grace periods, and is not adopting such a ban as part of the final rule.

*Conditions on the grace period for certain future promotional offers.* One industry commenter requested that the Board revise proposed comment 5a(b)(5)–1 to clarify that an issuer is not required to disclose in the table any conditions that a future promotional offer might place on the grace period. Specifically, this commenter indicated that some promotional offers place limitations on the grace period. For example, a promotional offer may provide that the grace period is eliminated for purchases under that offer, even if the customer pays his or her balance in full. The commenter argued that if the promotion is part of the account-opening offer, it is appropriate to include the specific limitations in the account-opening table. The commenter argued, however, that if the promotion is not offered at account-opening, it would not be appropriate to include the specific limitations in the account-opening table because they may never apply. The commenter believed that such disclosure would be confusing to consumers and potentially incorrect

and misleading. In this case, the commenter believed that the applicable grace period disclosures should be given with the promotional materials.

To avoid consumer confusion, the Board believes that issuers should not include in the table any conditions that a future promotional offer might place on the grace period. The Board believes that it is more appropriate for issuers to treat any conditions that a future promotional offer might place on the grace period as a change to the grace period under § 226.9(c)(2), or under § 226.9(b)(3) if the change is applicable only to checks that access a credit card account. The Board notes that if the change in the grace period is applicable only to checks that access a credit card account, the issuer is not required to provide a disclosure pursuant to § 226.9(c)(2) (including the 45-day notice requirement), so long as the issuer complies with the disclosure requirements in § 226.9(b)(3). See comment 9(c)(2)–4. The Board recognizes that comment 9(c)(2)–1 indicates that no notice of a change in terms need be given under § 226.9(c)(2) if the specific change is set forth initially. For comment 9(c)(2)–1 to apply, however, both the triggering event and the resulting modification must be stated with specificity. The Board believes that comment 9(c)(2)–1 is not applicable in these situations. The Board believes that creditors are not able to identify with sufficient specificity at account opening which future promotional offers would trigger the additional conditions on the grace period in a way that consumers would understand.

*Other grace period disclosures.* The proposal provides that the § 226.54 limitations on imposition of finance charges must not be disclosed when describing a grace period in the disclosure table under § 226.5a(b)(5), or in the account-opening table under § 226.6(b)(2)(v). One industry commenter suggested that the Board clarify that the § 226.54 limitations on imposition of finance charges must not be disclosed with respect to any grace period disclosure required by the regulation, such as the disclosure of any grace period related to checks that access credit card accounts under § 226.9(b)(3)(i)(D), on the periodic statement under § 226.7(b)(8), or on the renewal notice under § 226.9(e).

1. *Grace period disclosure for checks that access a credit card account.* Section 226.9(b)(3)(i)(D) provides that with respect to checks that access a credit card account, creditors generally must disclose on the front of the page containing those checks whether or not

any grace period will apply to the check transactions. This grace period disclosure must be disclosed in a table, along with other disclosures relating to the checks. Comment 9(b)(3)(i)(D)-1 currently provides that creditors may use the following language to describe a grace period on check transactions: "Your due date is [at least] \_\_\_ days after the close of each billing cycle. We will not charge you interest on check transactions if you pay your entire balance by the due date each month." Creditors may use the following language to describe that no grace period on check transactions is offered, as applicable: "We will begin charging interest on these checks on the transaction date."

As discussed above, one industry commenter suggested that the Board clarify that the § 226.54 limitations on imposition of finance charges must not be disclosed with respect to the disclosure of any grace period related to checks that access credit card accounts under § 226.9(b)(3)(i)(D), consistent with proposed guidance in comment 5a(b)(5)-1 and comments 6(b)(2)(v)-1 and -3. For the reasons discussed below, the final rule revises comment 9(b)(3)(i)(D)-1 to be consistent with guidance adopted under comment 5a(b)(5)-1 and comments 6(b)(2)(v)-1 and -3. Specifically, revised comment 9(b)(3)(i)(D)-1 clarifies that creditors in disclosing any grace period related to checks that access a credit card under § 226.9(b)(3)(i)(D) must not disclose the limitations on the imposition of finance charges as a result of a loss of a grace period in § 226.54, or the impact of payment allocation on whether interest is charged on transactions as a result of a loss of a grace period. The revised comment notes that some creditors may offer a grace period on credit extended by the use of an access check under which interest will not be charged on the check transactions if the consumer pays the outstanding balance shown on a periodic statement in full by the due date shown on that statement for one or more billing cycles. In these circumstances, comment 9(b)(3)(i)(D)-1 clarifies that § 226.9(b)(3)(i)(D) requires that the creditor disclose the grace period using the following language, or substantially similar language, as applicable: "Your due date is [at least] \_\_\_ days after the close of each billing cycle. We will not charge you any interest on check transactions if you pay your entire balance by the due date each month." Revised comment 9(b)(3)(i)(D)-1 notes, however, that other creditors may offer a grace period on check transactions under which interest may

be charged on check transactions even if the consumer pays the outstanding balance shown on a periodic statement in full by the due date shown on that statement each billing cycle. In these circumstances, revised comment 9(b)(3)(i)(D)-1 clarifies that § 226.9(b)(3)(i)(D) requires the creditor to amend the above disclosure language to describe accurately the conditions on the applicability of the grace period.

The Board believes that it is appropriate to adopt similar guidance for disclosure of a grace period applicable to access checks, as is adopted for disclosure of a grace period in the disclosure table under § 226.5a and the account-opening table under § 226.6. The grace period disclosure on checks accessing a credit card account required under § 226.9(b)(3)(i)(D) must be disclosed in a tabular format on the front of the page containing the checks, along with other required disclosures. The Board believes that the language contained in revised comment 9(b)(3)(i)(D)-1 for describing the grace period succinctly communicates to the consumer how he or she can avoid all interest charges on the check transactions, namely by paying the entire balance on the account by the due date each month. The Board believes the inclusion of language attempting to describe the limitations set forth in § 226.54 or the impact of payment allocation on whether interest will be charged on the check transactions due to the loss of a grace period could reduce the effectiveness of the grace period disclosure, and could distract consumers from other important information disclosed in the table.

2. *Grace period disclosure on periodic statements.* Section 226.7(b)(8) provides that a creditor must disclose on the periodic statement the date by which or the time period within which the new balance or any portion of the new balance shown on that periodic statement must be paid to avoid additional finance charges. Comment 7(b)(8)-3 clarifies that § 226.7(b)(8) does not require a card issuer to disclose the limitations on the imposition of finance charges in § 226.54. The final rule retains in comment 7(b)(8)-3 the clarification that § 226.7(b)(8) does not require a card issuer to disclose the limitations on the imposition of finance charges in § 226.54. The final rule also revises comment 7(b)(8)-3 to clarify that § 226.7(b)(8) does not require a card issuer to disclose the impact of payment allocation on whether interest is charged on transactions as a result of a loss of a grace period. Thus, under revised comment 7(b)(8)-3, a creditor would not be required to disclose under

§ 226.7(b)(8) the limitations on the imposition of finance charges as a result of a loss of a grace period in § 226.54, or the impact of payment allocation on whether interest is charged on transactions as a result of a loss of a grace period.

Nonetheless, unlike for the disclosure of the grace period in the tables under §§ 226.5a, 226.6, and 226.9(b)(3), a creditor in disclosing the grace period on the periodic statement under § 226.7(b)(8) would retain the flexibility to disclose the limitations on the imposition of finance charges as a result of a loss of a grace period in § 226.54, and the impact of payment allocation on whether interest is charged on transactions as a result of a loss of a grace period. The Board believes that it is appropriate to provide creditors with additional flexibility in describing the grace period on the periodic statement because this disclosure is not subject to tabular or other format requirements. In addition, the information about the limitations on the imposition of finance charges as result of a loss of a grace period in § 226.54, and the impact of payment allocation on whether interest is charged on transactions as a result of a loss of a grace period could be more relevant to consumers on the periodic statement, as consumers decide how much to pay in a particular billing cycle. Some consumers might find this information useful in evaluating the impact of a partial payment on whether they will pay interest on transactions in that billing cycle as a result of a loss of the grace period.

3. *Grace period disclosures on renewal notices under § 226.9(e).* In some instances, a card issuer is required under § 226.9(e) to send a notice to the consumer prior to the renewal of a consumer's credit or charge card. In this renewal notice, the card issuer must disclose certain account terms that would apply if the account were renewed, such as any grace period applicable to purchases as described in § 226.5a(b)(5). The Board does not believe, however, that any additional guidance is needed with respect to how a card issuer must disclose the grace period disclosure in the renewal notice under § 226.9(e). Under § 226.9(e), the grace period disclosure must be described using the same level of detail as the grace period disclosure in § 226.5a(b)(5). See § 226.9(e)(1)(i). Thus, guidance in § 226.5a(b)(5) and related commentary would be applicable to the grace period disclosure in the renewal notice under § 226.9(e).

4. *Disclosure of change to the grace period under § 226.9(c)(2).* The Board also notes if a creditor changes any

grace period disclosed under § 226.6(b)(2)(v), the creditor must disclose the change under § 226.9(c)(2), except as provided in § 226.9(c)(2)(v). The Board does not believe, however, that any additional guidance is needed with respect to how to disclose any change to the grace period under § 226.9(c)(2). Under § 226.9(c)(2)(iv)(D), the new grace period must be described using the same level of detail as required when disclosing the grace period in the account-opening table under § 226.6(b)(2). Thus, guidance in § 226.6(b)(2)(v) and related commentary is applicable to the grace period disclosure in the change-in-terms notice required under § 226.9(c)(2).

#### 5a(b)(6) Balance Computation Method

Section 226.5a(b)(6) requires that a card issuer disclose on or with a credit card application or solicitation information about the method it uses to determine the balance for purchases on which the finance charge is computed. Comment 5a(b)(6)–1 provides guidance on how to comply with this requirement to disclose balance computation information for purchase balances. This comment also contains a cross-reference to the commentary to § 226.5a(g) for guidance on particular balance computation methods. In the November 2010 Proposed Rule, the Board proposed to delete this cross-reference as obsolete because there currently is no commentary to § 226.5a(g). The Board adopts this deletion as proposed. For clarity, the final rule also revises comment 5a(b)(6)–1 to reference § 226.5a(g), where particular balance computation methods are described in the regulation.

#### Section 226.6 Account-Opening Disclosures

##### 6(b) Rules Affecting Open-End (Not Home-Secured) Plans

##### 6(b)(2) Required Disclosures for Account-Opening Table for Open-End (Not Home-Secured) Plans

##### 6(b)(2)(i) Annual Percentage Rate

The Board proposed to replace the reference to “card issuer” in § 226.6(b)(2)(i)(B) with “creditor” in order to correct a typographical error and to provide clarity and consistency with the scope of § 226.6(b). The Board did not receive significant comment on this aspect of the proposal, which is adopted as proposed.

In addition, for the reasons discussed in the supplementary information to § 226.5a(b)(1), the Board is adopting new § 226.6(b)(2)(i)(D)(3), which requires that certain information regarding revocation of an employee

preferential rate be disclosed directly beneath the account-opening table.

##### 6(b)(2)(v) Grace Period

Section 226.6(b)(2)(v) requires that the account-opening summary table state the date by which or the period within which any credit may be repaid without incurring a finance charge due to a periodic interest rate and any conditions on the availability of the grace period. If no grace period is provided, that fact must be disclosed.

Many creditors offer a grace period on purchases, but do not offer a grace period on cash advances and balance transfers. Samples G–17(B) and G–17(C) provide guidance on complying with § 226.6(b)(2)(v) when a creditor offers a grace period on purchases but no grace period on balance transfers and cash advances. See comment 6(b)(2)(v)–3. Specifically, Samples G–17(B) and G–17(C) contain the following model language to meet the requirements in § 226.6(b)(2)(v): “Your due date is [at least] \_\_\_ days after the close of each billing cycle. We will not charge you any interest on purchases if you pay your entire balance by the due date each month. We will begin charging interest on cash advances and balance transfers on the transaction date.” This model language was developed through extensive consumer testing.

Comment 6(b)(2)(v)–1 provides model language for creditors to use when they provide a grace period on all types of transactions for the account. Specifically, this comment states that an issuer that offers a grace period on all types of transactions for the account and conditions the grace period on the consumer paying his or her outstanding balance in full by the due date each billing cycle, or on the consumer paying the outstanding balance in full by the due date in the previous and/or the current billing cycle(s) will be deemed to meet the requirements in § 226.6(b)(2)(v) by providing the following disclosure, as applicable: “Your due date is [at least] \_\_\_ days after the close of each billing cycle. We will not charge you any interest on your account if you pay your entire balance by the due date each month.”

In addition, for the reasons discussed in the section-by-section analysis to § 226.5a(b)(5), in the February 2010 Final Rule, the Board adopted comment 6(b)(2)(v)–4, which clarifies that § 226.6(b)(2)(v) does not require a card issuer to disclose the limitations on the imposition of finance charges in § 226.54. Implementing the Credit Card Act, § 226.54 provides that, when a consumer pays some but not all of the balance subject to a grace period prior

to the expiration of the grace period, the card issuer is prohibited from imposing finance charges on the portion of the balance paid. In adopting comment 6(b)(2)–4, the Board was concerned that the inclusion of language attempting to describe the limitations set forth in § 226.54 could reduce the effectiveness of the grace period disclosure in the table.

As discussed above, many creditors offer a grace period on purchases, but do not offer a grace period on cash advances and balance transfers. Many of these creditors are using the model language set forth in Samples G–17(B) and G–17(C), or substantially similar language, to meet the requirements in § 226.6(b)(2)(v). Nonetheless, other creditors have chosen not to use this model language, even though the creditors could do so. Some of the creditors that have chosen not to use the model language are disclosing the grace period for purchases in more technical detail, including a discussion of the limitations on imposition of finance charges under § 226.54, and the impact of payment allocation on whether interest will be charged on purchases due to the loss of a grace period. Other creditors are including detailed language to explain the conditions on the grace period for purchases, such as an explanation that the consumer will not be charged any interest on new purchases, or any portion of a new purchase, paid by the due date on the consumer’s current billing statement if the consumer paid his or her entire balance on the previous billing statement in full by the due date on that statement.

Consistent with proposed changes to comment 5a(b)(5)–1 and for the reasons discussed in the section-by-section analysis to § 226.5a(b)(5), the Board proposed to revise comment 6(b)(2)(v)–1 to clarify that creditors must not disclose in the table required by § 226.6(b) the limitations on the imposition of finance charges as a result of a loss of a grace period in § 226.54, or the impact of payment allocation on whether interest is charged on transactions as a result of a loss of a grace period. The Board believed the inclusion of language attempting to describe the limitations set forth in § 226.54 and the impact of payment allocation on whether interest will be charged on transactions due to the loss of a grace period could reduce the effectiveness of the grace period disclosure required by § 226.6(b)(2)(v). Comment 6(b)(2)(v)–4, which states that card issuers are not required to disclose the limitations set forth in § 226.54, would have been deleted.

In addition, consistent with proposed changes to comment 5a(b)(5)–1 and for the reasons discussed in the section-by-section analysis to § 226.5a(b)(5), the Board proposed to revise comment 6(b)(2)(v)–3 to clarify that § 226.6(b)(2)(v) requires certain creditors that provide a grace period on purchases but not on cash advances and balance transfers to use the disclosure language this is currently set forth in Samples G–17(B) and G–17(C). Specifically, proposed comment 6(b)(2)(v)–3 noted that some creditors do not offer a grace period on cash advances and balance transfers, but offer a grace period for all purchases under which interest will not be charged on purchases if the consumer pays the outstanding balance shown on a periodic statement in full by the due date shown on that statement for one or more billing cycles. Proposed comment 6(b)(2)(v)–3 would have clarified that in these circumstances, § 226.6(b)(2)(v) requires that the creditor disclose the grace period for purchases and the conditions for its applicability, and the lack of a grace period for cash advances and balance transfers using the following language, or substantially similar language, as applicable: “Your due date is [at least] \_\_\_ days after the close of each billing cycle. We will not charge you any interest on purchases if you pay your entire balance by the due date each month. We will begin charging interest on cash advances and balance transfers on the transaction date.” This disclosure language, which also is set forth in the “Paying Interest” row in Samples G–17(B) and G–17(C), was developed through extensive consumer testing. The Board believed this disclosure language achieves its intended purpose of explaining succinctly how a consumer can avoid all interest charges on purchases, while explaining that no grace period is offered for cash advances and balance transfers.

The Board recognized that some creditors may offer a grace period on purchases but structure their grace periods differently than as described above, and the disclosure language described above may not be accurate for those creditors. Proposed comment 6(b)(2)(v)–3 noted that some creditors may offer a grace period on all purchases under which interest may be charged on purchases even if the consumer pays the outstanding balance shown on a periodic statement in full by the due date shown on that statement each billing cycle. Proposed comment 6(b)(2)(v)–3 would have clarified that in these circumstances, § 226.6(a)(2)(v) requires the creditor to amend the above

disclosure language to accurately describe the conditions on the applicability of the grace period. Nonetheless, under the proposal, these creditors in disclosing the grace period and the conditions on its availability still would not have been allowed to disclose the limitations on the imposition of finance charges as a result of a loss of a grace period in 226.54, or the impact of payment allocation on whether interest is charged on purchases as a result of a loss of a grace period.

Similarly, some creditors may not offer a grace period on cash advances and balance transfers, and will begin charging interest on these transactions from a date other than the transaction date, such as the posting date. Proposed comment 6(b)(2)(v)–3 would have clarified that in these circumstances, § 226.6(a)(2)(v) requires the creditor to amend the above disclosure language to be accurate.

Consistent with the proposed changes to comment 6(b)(2)(v)–3, the Board also proposed changes to comment 6(b)(2)(v)–1 which discusses circumstances where a creditor offers a grace period on all types of transactions on the account, including purchases, cash advances, and balance transfers. Specifically, proposed comment 6(b)(2)(v)–1 noted that some creditors may offer a grace period on all types of transactions under which interest will not be charged on transactions if the consumer pays the outstanding balance shown on a periodic statement in full by the due date shown on that statement for one or more billing cycles. In these circumstances, proposed comment 6(b)(2)(v)–1 would have clarified that § 226.6(b)(2)(v) requires that the creditor disclose the grace period and the conditions for its applicability using the following language, or substantially similar language, as applicable: “Your due date is [at least] \_\_\_ days after the close of each billing cycle. We will not charge you any interest on your account if you pay your entire balance by the due date each month.” Proposed comment 6(b)(2)(v)–1 also noted that other creditors may offer a grace period on all types of transactions under which interest may be charged on transactions even if the consumer pays the outstanding balance shown on a periodic statement in full by the due date shown on that statement each billing cycle. This proposed comment would have clarified that in these circumstances, § 226.6(b)(2)(v) requires the creditor to amend the above disclosure language to describe accurately the conditions on the applicability of the grace period.

Consistent with changes to comment 5a(b)(5)–1 and for the reasons discussed in the section-by-section analysis to § 226.5a(b)(5), the final rule adopts comments 6(b)(2)(v)–1 and –3 as proposed, except that—as discussed above with respect to comment 5a(b)(5)–1—the Board has removed the proposed example regarding the loss of a grace period on purchases when the account is used for a cash advance. The Board believes the inclusion of language attempting to describe the limitations set forth in § 226.54 and the impact of payment allocation on whether interest will be charged on transactions due to the loss of a grace period could reduce the effectiveness of the grace period disclosure required by § 226.6(b)(2)(v). Comment 6(b)(2)(v)–3 clarifies that § 226.6(b)(2)(v) requires the creditor to disclose the grace period for purchases and the conditions for its applicability, and the lack of a grace period for cash advances and balance transfers using the following language, or substantially similar language, as applicable: “Your due date is [at least] \_\_\_ days after the close of each billing cycle. We will not charge you any interest on purchases if you pay your entire balance by the due date each month. We will begin charging interest on cash advances and balance transfers on the transaction date.” This disclosure language, which also is set forth in the “Paying Interest” row in Samples G–17(B) and G–17(C), was developed through extensive consumer testing. The Board believed this disclosure language achieves its intended purpose of explaining succinctly how a consumer can avoid all interest charges on purchases, while explaining that no grace period is offered for cash advances and balance transfers.

#### *6(b)(2)(vi) Balance Computation Method*

Section 226.6(b)(2)(vi) requires that a creditor disclose information about balance computation methods as part of the account-opening disclosures. Specifically, § 226.6(b)(2)(vi) provides that a creditor must disclose the name of the balance computation method listed in § 226.5a(g) that is used to determine the balance on which the finance charge is computed for each feature, or an explanation of the method used if it is not listed, along with a statement that an explanation of the method(s) required by § 226.6(b)(4)(i)(D) is provided with the account-opening disclosures. The information required by § 226.6(b)(2)(vi) must appear directly beneath the account-opening summary table. *See* § 226.6(b)(2)(ii).

The names of the balance computation methods listed in

§ 226.5a(g) describe balance computation methods for purchases (e.g., “average daily balance (including new purchases)” and “average daily balance (excluding new purchases)”). Nonetheless, unlike § 226.5a(b)(6), creditors are required in § 226.6(b)(2)(vi) to disclose the balance computation method used for each feature on the account. Samples G–17(B) and G–17(C) provide guidance on how to disclose the balance computation method where the same method is used for all features on the account. See comment 6(b)(2)(vi)–1. Samples G–17(B) and G–17(C) disclose, as an example, the “average daily balance (including new purchases)” as the method that is being used to calculate the balance for all features on the account. Thus, for simplicity, where the balance for each feature is computed using the same balance computation method, a creditor may use the name of the appropriate balance computation method listed in § 226.5a(g) (e.g., “average daily balance (including new purchases)”) to satisfy the requirement to disclose the name of the method for all features on the account, even though the name only refers to purchases.

Questions have been asked, however, regarding whether a creditor may revise the names of the balance computation methods listed in § 226.5a(g) to be more accurate by referring more broadly to all new transactions (rather than referring only to “new purchases”) when the same method is used to calculate the balances for all features on the account. For example, creditors have asked whether they can revise the name listed in § 226.5a(g)(i) to disclose it as “average daily balance (including new transactions)” when this method is used to calculate the balances for all features of the account. Also, creditors have asked whether they may revise the names listed in § 226.5a(g) to be applicable to features other than purchases. Creditors in some cases may disclose the balance computation methods separately for each feature, such as when a different balance computation method applies to purchases than to cash advances.

To address these compliance issues and to provide additional flexibility to creditors, in the November 2010 Proposed Rule, the Board proposed to revise comment 6(b)(2)(vi)–1 to provide that in cases where the balance for each feature is computed using the same balance computation method, a single identification of the name of the balance computation method is sufficient. In that case, the proposed comment would have made clear that a creditor may use an appropriate name listed in § 226.5a(g) (e.g., “average daily balance

(including new purchases)”) to satisfy the requirement to disclose the name of the method for all features on the account, even though the name only refers to purchases. For example, if a creditor uses the average daily balance method including new transactions as the balance computation method for all features, a creditor may use the name “average daily balance (including new purchases)” listed in § 226.5a(g)(i) to satisfy the requirement to disclose the name of the balance computation method for all features. As an alternative, the proposed comment would have provided that a creditor may revise the balance computation names listed in § 226.5a(g) to refer more broadly to all new credit transactions, such as using the language “new transactions” or “current transactions” (e.g., “average daily balance (including new transactions)”), rather than simply referring to new purchases when the same method is used to calculate the balances for all features of the account.

In addition, the Board proposed to add comment 6(b)(2)(vi)–2 to address situations where a creditor is disclosing the name of the balance computation methods separately for each feature. In that case, in using the names listed in § 226.5a(g) to satisfy the requirements of § 226.6(b)(2)(vi) for features other than purchases, proposed comment 6(b)(2)(vi)–2 would have made clear that a creditor must revise the names listed in § 226.5a(g) to refer to the other features. For example, under proposed comment 6(b)(2)(vi)–2, when disclosing the name of the balance computation method applicable to cash advances, a creditor would have been required to revise the name listed in § 226.5a(g)(i) to disclose it as “average daily balance (including new cash advances)” when the balance for cash advances is figured by adding the outstanding balance (including new cash advances and deducting payments and credits) for each day in the billing cycle, and then dividing by the number of days in the billing cycle. Similarly, under proposed comment 6(b)(2)(vi)–2, a creditor would have been required to revise the name listed in § 226.5a(g)(ii) to disclose it as “average daily balance (excluding new cash advances)” when the balance for cash advances is figured by adding the outstanding balance (excluding new cash advances and deducting payments and credits) for each day in the billing cycle, and then dividing by the number of days in the billing cycle.

The Board received several comments supporting proposed comment 6(b)(2)(vi)–2, and no comments opposing it. For the reasons discussed

above, the Board adopts comment 6(b)(2)(vi)–2 as proposed.

*Balance computation methods that consider transactions from previous cycles.* One industry commenter requested that the Board confirm that the balance computation methods listed in § 226.5a(g) can be used for transactions that accrue interest beginning on the transaction date even if the transaction date is prior to the first day of the cycle in which the transaction posts to the account, which may be the case for cash advances. The Board notes that § 226.54 provides that a card issuer cannot impose finance charges as a result of the loss of a grace period on a credit card account under an open-end (not home-secured) consumer credit plan if those finance charges are based on balances for days in billing cycles that precede the most recent billing cycle. Nonetheless, § 226.54 does not apply if transactions are not eligible for a grace period. See comment 54(a)(1)–1. Thus, in certain instances, a card issuer is not prohibited by § 226.54 from calculating interest charges beginning on the transaction date even if the transaction date is prior to the first day of the cycle in which the transaction posts to the account. Nonetheless, a creditor that uses such a balance computation method may not use the names of the balance computation methods listed in § 226.5a(g) to describe such method. The balance computation methods listed in § 226.5a(g) contemplate that the balances are computed using only days in the current billing cycle. For balance computation methods that calculate the balance using days from the previous cycle, the creditor may not use the names of the balance computation methods listed in § 226.5a(g). Instead, the creditor must provide an explanation of the method underneath the disclosure table required under § 226.5a and the account-opening table required under § 226.6. See § 226.5a(b)(2)(iii), § 226.5a(b)(6), § 226.6(b)(1)(ii), and § 226.6(b)(2)(vi). In describing this balance computation method below the tables required under § 226.5a and § 226.6, the creditor must clearly explain the method in as much detail as set forth in the descriptions of balance methods in § 226.5a(g). See comment 5a(b)(6)–1.

*Using the phrase “(including new transactions)” in describing balance computation method for § 226.5a.* One industry commenter requested that, consistent with proposed comment 6(b)(2)(vi)–2, the Board clarify that an issuer may use either the name “daily balance (including new purchases)” or “daily balance (including new

*transactions*)” to disclose the balance computation method underneath the disclosure table required by § 226.5a. The final rule does not contain this clarification. Section 226.5a(b)(6) requires that a card issuer disclose on or with a credit card application or solicitation information about the balance computation method it uses for purchases. Under § 226.5a(b)(6), an issuer is not required to disclose the balance computation method used for other features on the account. Accordingly, the names of the balance computation methods listed in § 226.5a(g) describe balance computation methods for purchases (e.g., “average daily balance (including new purchases)” and “average daily balance (excluding new purchases)”). Thus, the Board believes it is appropriate to continue to describe the balance computation methods in § 226.5a(g) with respect to purchases.

#### Section 226.7 Periodic Statement

##### 7(b) Rules Affecting Open-End (Not Home-Secured) Plans

##### 7(b)(5) Balance on Which Finance Charge Computed

Section 226.7(b)(5) provides that a creditor must disclose on the periodic statement the amount of the balance to which a periodic rate was applied and an explanation of how that balance was determined, using the term *Balance Subject to Interest Rate*. As an alternative to providing an explanation of how the balance was determined, a creditor that uses a balance computation method identified in § 226.5a(g) may, at the creditor’s option, identify the name of the balance computation method and provide a toll-free telephone number where consumers may obtain from the creditor more information about the balance computation method and how resulting interest charges were determined. If the method used is not identified in § 226.5a(g), the creditor must provide a brief explanation of the method used.

Comment 7(b)(5)–7 provides guidance on the use of one balance computation method explanation or name when multiple balances are disclosed. Specifically, comment 7(b)(5)–7 notes that sometimes the creditor will disclose more than one balance to which a periodic rate was applied, even though each balance was computed using the same balance computation method. For example, if a plan involves purchases and cash advances that are subject to different rates, more than one balance must be disclosed, even though the same computation method is used for determining the balance for each

feature. In these cases, one explanation or a single identification of the name of the balance computation method is sufficient. In addition, sometimes the creditor separately discloses the portions of the balance that are subject to different rates because different portions of the balance fall within two or more balance ranges, even when a combined balance disclosure would be permitted under comment 7(b)(5)–1. In these cases, one explanation or a single identification of the name of the balance computation method is also sufficient (assuming, of course, that all portions of the balance were computed using the same method).

The comment does not specify, however, whether in this case a creditor may use the balance computation method names listed in § 226.5a(g) (e.g., “average daily balance (including new purchases)”) as the single identification of the name of the balance computation method used for all features, even though the name only refers to purchases. In addition, as discussed in the section-by-section analysis to § 226.6(b)(2)(vi), questions have been asked as to whether a creditor may revise the names of the balance computation methods listed in § 226.5a(g) to refer more broadly to all new transactions (rather than referring only to “new purchases”) when the same method is used to calculate the balances for all features on the account. For example, creditors have asked whether they may revise the name listed in § 226.5a(g)(i) to disclose it as “average daily balance (including new transactions)” when this method is used to calculate the balances for all features of the account. Also, creditors have asked whether they may revise the names listed in § 226.5a(g) to be applicable to features other than purchases. Creditors in some cases may disclose the balance computation methods separately for each feature, such as when a different balance computation method applies to purchases than for cash advances.

To address these issues and to provide flexibility to creditors, consistent with proposed guidance in comment 6(b)(2)(vi), the Board proposed to revise comment 7(b)(5)–7 to provide that in cases where each balance was computed using the same balance computation method, a creditor may use an appropriate name listed in § 226.5a(g) (e.g., “average daily balance (including new purchases)”) as the single identification of the name of the balance computation method applicable to all features, even though the name only refers to purchases. For example, under proposed comment 7(b)(5)–7, if a

creditor uses the average daily balance method including new transactions as the balance computation method for all features, a creditor would have been allowed to use the name “average daily balance (including new purchases)” listed in § 226.5a(g)(i) to satisfy the requirement to disclose the name of the balance computation method for all features. As an alternative, the proposed comment provided that a creditor may revise the balance computation names listed in § 226.5a(g) to refer more broadly to all new credit transactions, such as using the language “new transactions” or “current transactions” (e.g., “average daily balance (including new transactions)”), rather than simply referring to new purchases when the same method is used to calculate the balances for all features of the account.

Also consistent with proposed comment 6(b)(2)(vi)–2, the Board proposed to add a new comment 7(b)(5)–8 to address situations where a creditor is disclosing the name of the balance computation methods separately for each feature. Proposed comment 7(b)(5)–8 would have provided that in those cases, where a creditor is using the names listed in § 226.5a(g) to satisfy the requirements of § 226.7(b)(5) for features other than purchases, a creditor must revise the names listed in § 226.5a(g) to refer to the other features. For example, under proposed comment 7(b)(5)–8, when disclosing the name of the balance computation method applicable to cash advances, a creditor would have been required to revise the name listed in § 226.5a(g)(i) to disclose it as “average daily balance (including new cash advances)” when the balance for cash advances is figured by adding the outstanding balance (including new cash advances and deducting payments and credits) for each day in the billing cycle, and then dividing by the number of days in the billing cycle. Similarly, a creditor would have been required to revise the name listed in § 226.5a(g)(ii) to disclose it as “average daily balance (excluding new cash advances)” when the balance for cash advances is figured by adding the outstanding balance (excluding new cash advances and deducting payments and credits) for each day in the billing cycle, and then dividing by the number of days in the billing cycle.

The Board received several comments supporting proposed comments 7(b)(5)–7 and –8, and no comments opposing them. For the reasons discussed above, the Board adopts these comments as proposed.

*7(b)(6) Charges Imposed*

Section 226.7(b)(6) generally requires the disclosure of the amounts of any charges imposed on a plan, which consists of finance charges attributable to periodic interest rates (disclosed as *Interest Charged*), and charges imposed as part of a plan other than charges attributable to periodic interest rates (disclosed as *Fees*). In addition, calendar year-to-date totals for both interest and fees must be disclosed. Comment 7(b)(6)–3 provides guidance for disclosing calendar-year-to-date totals for fees. In order to avoid inconsistency, the Board proposed to amend comment 7(b)(6)–3 to clarify that this guidance applies to fees as well as interest charged. The Board did not receive significant comment on this clarification, which is adopted in the final rule. The Board has modified the proposed comment to clarify that creditors must disclose separate totals for interest and fees.

*7(b)(8) Grace Period*

See discussion regarding § 226.5a(b)(5).

*7(b)(12) Repayment Disclosures*

Section 226.7(b)(12) requires that for a credit card account under an open-end (not home-secured) consumer credit plan, card issuers generally must disclose the following repayment disclosures on each periodic statement: (1) A “warning” statement indicating that making only the minimum payment will increase the interest the consumer pays and the time it takes to repay the consumer’s balance; (2) the length of time it would take to repay the outstanding balance if the consumer pays only the required minimum monthly payments and no further advances are made; (3) the total cost to the consumer of paying the balance in full if the consumer pays only the required minimum monthly payment and no further advances are made; (4) the monthly payment amount that would be required for the consumer to pay off the outstanding balance in 36 months, if no further advances are made; (5) the total cost to the consumer of paying the balance in full if the consumer pays the balance over 36 months; (6) the total savings of paying the balance in 36 months (rather than making only minimum payments); and (7) a toll-free telephone number at which the consumer may receive information about accessing consumer credit counseling. See § 226.7(b)(12)(i).

To simplify the disclosures, § 226.7(b)(12)(i) and (ii) provide that card issuers must round the following

disclosures to the nearest whole dollar when disclosing them on the periodic statement: (1) The minimum payment total cost estimate, (2) the estimated monthly payment for repayment in 36 months, (3) the total cost estimate for repayment in 36 months, and (4) the savings estimate for repayment in 36 months. See § 226.7(b)(12)(i)(C), (b)(12)(i)(F)(1)(i), (b)(12)(i)(F)(1)(iii), (b)(12)(i)(F)(1)(iv) and (b)(12)(ii)(C). Some card issuers have requested, however, that they be permitted to provide these disclosures on the periodic statement rounded to the nearest cent to be more accurate and to avoid potential consumer confusion that rounding to the dollar might cause in certain circumstances. For example, assume that a consumer’s balance is \$3,000 and the APR on the account is 14.4%. The estimated monthly payment to repay the balance in 36 months would be \$103.12 (rounded to the nearest cent). A card issuer would be required to disclose on the periodic statement the estimated monthly payment for repayment in 36 months as \$103, and the total cost estimate for repayment in 36 months as \$3,712. (The total cost estimate for repayment in 36 months is calculated by multiplying \$103.12 times 36, and rounding that result to the nearest whole dollar.) Nonetheless, if a consumer pays \$103 each month for 36 months, the consumer will have paid only \$3,708 (not the \$3,712 shown on the statement). Thus, rounding the disclosures to whole dollars when providing them on the periodic statement in some cases may make the disclosures appear to be inconsistent with each other.

To provide additional flexibility to card issuers, in the November 2010 Proposed Rule, the Board proposed to revise § 226.7(b)(12)(i) and (b)(12)(ii) to allow card issuers, at their option, to provide the following disclosures on the periodic statement either rounded to the nearest whole dollar or to the nearest cent: (1) The minimum payment total cost estimate, (2) the estimated monthly payment for repayment in 36 months, (3) the total cost estimate for repayment in 36 months, and (4) the savings estimate for repayment in 36 months. Nonetheless, proposed comment 7(b)(12)–1 would have provided that an issuer’s rounding for all of these disclosures must be consistent. Under proposed comment 7(b)(12)–1, an issuer would have been allowed to round all of these disclosures to the nearest whole dollar when providing them on periodic statements, or round all of these disclosures to the nearest cent. An

issuer would not have been allowed, however, to round some of the disclosures to the nearest whole dollar, while rounding other disclosures to the nearest cent. The Board believed that requiring an issuer to be consistent in how it rounds these disclosures helps to ensure that these disclosures remain consistent with each other.

The Board received several comments supporting the proposed changes to § 226.7(b)(12)(i) and (b)(12)(ii) and comment 7(b)(12)–1, and no comments opposing them. For the reasons discussed above, the Board adopts these changes as proposed.

*7(b)(14) Deferred Interest or Similar Transactions*

Section 226.7(b)(14) generally requires disclosure of the date by which any outstanding balance subject to a deferred interest or similar program must be paid in full in order to avoid finance charges on the front of each periodic statement issued during the deferred interest period. In order to avoid potential confusion, the Board proposed to amend § 226.7(b)(14) and its commentary to clarify that the disclosure required by § 226.7(b)(14) may be on the front of any page of each periodic statement issued during the deferred interest period that reflects the deferred interest or similar transaction. Industry commenters generally supported the proposal.

However, consumer group commenters opposed the proposal as well as deferred interest plans generally. These commenters argued that the deferred interest disclosure should be on the front of the first page of the periodic statement, or in the alternative, grouped with the disclosure of the deferred interest balance, deferred interest APR, and accrued interest for the deferred interest balance.

The clarifications in § 226.7(b)(14) and its commentary is adopted as proposed. The Board believes this clarification ensures that consumers continue to receive conspicuous disclosure of the end of the deferred interest period and also provides greater certainty and flexibility to creditors in order to facilitate compliance.

*Section 226.9 Subsequent Disclosure Requirements**9(b) Disclosures for Supplemental Credit Access Devices and Additional Features**9(b)(3) Checks That Access a Credit Card Account*

Section 226.9(b)(3) sets forth requirements for disclosures that must be provided with checks that access a credit card account. These disclosures

set forth certain key terms, such as the rates that will apply to the checks, any transaction fees applicable to the checks, and whether or not a grace period is given within which any credit extended by use of the checks may be repaid without incurring interest charges. In the November 2010 Proposed Rule, the Board proposed to clarify that if any rate disclosed pursuant to § 226.9(b)(3) is a variable rate, the card issuer must disclose that the rate may vary and how the rate is determined. Proposed § 226.9(b)(3)(iii) generally mirrored the disclosure requirements for variable rates set forth in §§ 226.5a(b)(1)(i) and 226.6(b)(2)(i)(A). In describing how the applicable rate will be determined, the proposal would have required the card issuer to identify the type of index or formula that is used in setting the rate. The proposal would not have permitted disclosure of the value of the index and the amount of the margin that are used to calculate the variable rate in the table. In addition, the proposal would not have permitted a card issuer to disclose any applicable limitations on rate increases in the table.

One card issuer commented in support of the proposed variable-rate disclosure requirements in § 226.9(b)(3)(iii). One other card issuer agreed that it is important that variable rate information be disclosed to consumers who receive checks that access a credit card account, but questioned the benefit of providing the proposed variable rate disclosures to consumers who have already received variable rate disclosures at account opening. Several other issuers commented that requiring additional disclosures about variable rates could contribute to information overload and impose burden on issuers that may result in reduced availability of promotional offers in connection with checks that access a credit card account. Two such commenters recommended that the final rule limit the requirement to provide variable rate disclosures to situations where the promotional or post-promotional rates or fees that apply to the checks exceed the rates applicable prior to the promotion.

The Board continues to believe that it is important that consumers be informed if the rates that apply to checks that access a credit card account are variable rates, to better assist consumers with making an informed decision regarding use of the checks. Accordingly, the Board is adopting § 226.9(b)(3)(iii) as proposed. Even if variable rates are disclosed at account opening, the Board also believes it is important that consumers receive

information regarding any applicable variable rate at the same time that they receive other disclosures regarding the check offer, including the annual percentage rates that will apply to the checks. The Board is concerned that even if variable rates are disclosed at account opening, consumers may not be aware when they receive a check offer that the rates that apply to those checks and that must be disclosed pursuant to § 226.9(b)(3) also will be variable rates. Indeed, it may be confusing or even misleading for the rates disclosed pursuant to § 226.9(b)(3) to state nothing regarding the fact that the rates that apply to the checks are variable, when disclosures of annual percentage rates provided with credit card applications and solicitations and at account opening are required to set forth certain information identifying a rate as variable. The variable-rate disclosure requirements in new § 226.9(b)(3)(iii) are based on the approach in §§ 226.5a(b)(1)(i) and 226.6(b)(2)(i)(A), which was informed by consumer testing conducted on behalf of the Board. The Board believes that § 226.9(b)(3)(iii) strikes the appropriate balance between informing consumers of key information regarding the variable rate or rates applicable to checks that access a credit card account and avoiding overly detailed information that may be confusing to consumers.

Section 226.9(b)(3)(i) requires that the disclosures given in connection with checks that access a credit card account be in the form of a table with headings, content, and form substantially similar to Sample G–19. In the November 2010 Proposed Rule, the Board proposed a new comment 9(b)(3)(i)–2 to clarify that a card issuer may include in the tabular disclosure provided pursuant to § 226.9(b)(3) disclosures regarding the terms offered on non-check transactions, provided that such transactions are subject to the same terms that are required to be disclosed pursuant to § 226.9(b)(3)(i) for the checks that access a credit card account. Proposed comment 9(b)(3)(i)–2 stated, however, that a card issuer may not include in the table information regarding additional terms that are not required disclosures for access checks pursuant to § 226.9(b)(3).

Commenters who addressed this aspect of the proposal supported comment 9(b)(3)(i)–2, which is adopted as proposed. As stated in the November 2010 Proposed Rule, the Board believes that if a card issuer offers a single set of terms that apply both to checks that access a credit card account and to other transactions, it is appropriate to permit

the card issuer to present one combined tabular disclosure. For example, a card issuer may offer a single set of promotional terms that apply both to checks that access a credit card account and to balance transfers made without use of an access check. Under these circumstances, it is unnecessary to require card issuers to provide two substantively identical but separate sets of disclosures, one for check transactions and one for other balance transfers. Accordingly, the Board believes that comment 9(b)(3)(i)–2 will ensure that consumers receive clear disclosures regarding checks that access a credit card account, while at the same time minimizing the operational burden that would be associated with providing two sets of disclosures of substantively identical terms.

Finally, the Board has revised the guidance regarding grace periods in comment 9(b)(3)(i)(D)–1 consistent with the revisions to the commentary for § 226.5a(b)(5), which are discussed in detail above.

#### *9(c)(2) Rules Affecting Open-End (Not Home-Secured) Plans*

Comment 9(c)(2)–1 states that, except as provided in § 226.9(g)(1), no notice of a change in terms need be given if the specific change is set forth initially, such as rate increases under a properly disclosed variable-rate plan in accordance with § 226.9(c)(2)(v)(C). The Board proposed to revise this comment to clarify that the initial disclosure of the change must be provided consistent with any applicable requirements. For example, no notice of a change in terms is required when a promotional rate expires, provided that the card issuer disclosed the terms associated with that promotional rate consistent with § 226.9(c)(2)(v)(B). Commenters supported this revision, which is adopted as proposed.

#### *9(c)(2)(i) Changes Where Written Advance Notice is Required*

#### *9(c)(2)(ii) Significant Changes in Account Terms*

Section 226.9(c)(2) sets forth the change-in-terms notice requirements for open-end consumer credit plans that are not home-secured. Section 226.9(c)(2)(i) states that, when a significant change in account terms as described in § 226.9(c)(2)(ii) is made to a term required to be disclosed under § 226.6(b)(3), (b)(4), or (b)(5), a creditor must generally provide a written notice at least 45 days prior to the effective date of the change. Section 226.9(c)(2)(i) defines a “significant change in account terms” as a change to a term required to



be disclosed under § 226.6(b)(1) and (b)(2), an increase in the required minimum periodic payment, or the acquisition of a security interest.

The Board is aware that some confusion has arisen regarding the references to § 226.6(b)(3), (b)(4), and (b)(5) contained in § 226.9(c)(2). In particular, given that “significant change in account terms” is defined in § 226.9(c)(2)(ii) generally with respect to terms required to be disclosed in the account-opening table under § 226.6(b)(1) and (b)(2), several creditors asked the Board to clarify what advance notice requirements apply when a change is made to a term required to be disclosed under § 226.6(b)(3), (b)(4), or (b)(5) that (1) may impact a term required to be disclosed in the account-opening table pursuant to § 226.6(b)(1) and (b)(2), but (2) is not a term that itself is required or permitted to be included in the account-opening table. For example, the Board was asked whether 45 days’ advance notice is required prior to changing the date or schedule on which the value of a variable annual percentage rate is adjusted, if the formula for computing the value of the variable rate otherwise remains the same (*i.e.*, based on the same index and margin). The Board notes that the variable annual percentage rate is a term required to be disclosed pursuant to § 226.6(b)(1) and (b)(2). In contrast, the date or schedule on which the rate is computed is not required or permitted to be disclosed in the tabular disclosure pursuant to § 226.6(b)(1) and (b)(2). However, the date or schedule on which the rate is computed is required to be disclosed at account opening outside of the table pursuant to § 226.6(b)(4).

The Board proposed several amendments to § 226.6(b)(1) and (b)(2) to clarify the advance notice requirements for changes to terms specified in § 226.6(b)(3), (b)(4), or (b)(5) that are not also terms required to be disclosed under § 226.6(b)(1) and (b)(2). First, the Board proposed to delete as unnecessary the references to § 226.6(b)(3), (b)(4) and (b)(5), as well as a reference to increases in the required minimum periodic payment, from § 226.9(c)(2)(i). The Board noted in the November 2010 Proposed Rule that defining the term “significant change in account terms” exclusively in § 226.9(c)(2)(ii) and deleting the references to § 226.6(b)(3), (b)(4) and (b)(5) and increases in the required minimum periodic payment in § 226.9(c)(2)(i) would alleviate confusion regarding compliance with the change-in-terms notice requirements.

Second, the Board proposed to amend the definition of “significant change in account terms” in § 226.9(c)(2)(ii) to clarify to which terms the 45-day advance notice requirements in § 226.9(c)(2) apply. The proposal would have amended § 226.9(c)(2)(ii) to define “significant change in account terms” as a change to a term required to be disclosed under § 226.6(b)(1) and (b)(2), an increase in the required minimum periodic payment, a change to a term required to be disclosed under § 226.6(b)(4), or the acquisition of a security interest.

Two industry commenters objected to the proposed amendment clarifying that changes to terms required to be disclosed under § 226.6(b)(4) are “significant changes in account terms.” These commenters argued that 45 days’ advance notice of changes in terms required to be disclosed under § 226.6(b)(4) is unnecessary and that 45 days’ advance notice should be required only in connection with changes to those terms that are required to be disclosed in the account opening disclosure table. The commenters argued that advance notice of changes in terms required to be disclosed under § 226.6(b)(4) would better be addressed by state or contract law, and that highlighting these changes by requiring notice pursuant to § 226.9(c)(2) could contribute to “information overload.” Finally, these commenters indicated that application of the advance notice rules to changes in terms required to be disclosed under § 226.6(b)(4) would increase regulatory burden and administrative costs.

In contrast, consumer groups and one industry commenter supported the Board’s proposal to expressly provide that changes to terms required to be disclosed under § 226.6(b)(4) are “significant changes in account terms.” The industry commenter acknowledged that the clarification could result in the provision of more change-in-terms notices but agreed that the changes are significant to the consumer and should be subject to 45 days’ advance notice.

One industry commenter erroneously stated that the proposal would create a new requirement that 45 days’ advance notice be given prior to changing the balance computation method applicable to an open-end (not home-secured) account. This commenter argued that a change in the balance computation method is not a significant change in account terms and that 45 days’ advance notice should not be required. The Board notes that the balance computation method is a term required to be disclosed under § 226.6(b)(1) and (b)(2), and therefore a change in the

balance computation method currently is a “significant change in account terms” under existing § 226.9(c)(2)(ii), and would remain a “significant change in account terms” under the November 2010 Proposed Rule.

The Board is adopting the changes to § 226.9(c)(2)(i) and (c)(2)(ii) as proposed. Accordingly, § 226.9(c)(2)(ii) as adopted specifically categorizes changes in terms required to be disclosed under § 226.6(b)(4) as “significant change[s] in account terms.” Section 226.6(b)(4) requires disclosure of certain information regarding periodic rates that may be used to calculate interest. The Board believes that changes in the manner in which annual percentage rates are computed, for example, changes in the frequency with which a variable rate may increase, are significant changes because they may impact the amount of interest imposed on a consumer’s account, which is one of the key costs associated with open-end (not home-secured) credit. While certain details regarding rates mandated by § 226.6(b)(4) are not required or permitted to be disclosed in the account-opening table, changes in the manner in which an interest rate is computed may have a direct impact on the annual percentage rate expressed as a yearly rate, which is a required disclosure in the account-opening table under § 226.6(b)(1) and (b)(2). For example, for variable rates § 226.6(b)(4) requires disclosure of the frequency with which the rate may increase and the circumstances under which the rate may increase, both of which may impact the computation of the rate required to be disclosed in the account-opening table. Thus, the Board continues to believe that 45 days’ advance notice of such changes is appropriate to ensure that consumers can take actions to mitigate the potential impact of changes in the way in which the annual percentage rate or rates applicable to their accounts are computed.

As discussed below, the Board notes that the final rule provides creditors with flexibility in how to format the notice of a change to a term required to be disclosed pursuant to § 226.6(b)(4); if the change does not result in a change to a term required to be disclosed pursuant to § 226.6(b)(1) or (b)(2), the notice would not be required to be presented in a tabular format pursuant to § 226.9(c)(2)(iv)(D). The Board believes that this flexibility will alleviate burden on creditors, while ensuring that the changes of the most importance to consumers are appropriately highlighted.

Proposed § 226.9(c)(2)(ii) did not specifically identify changes in terms

required to be disclosed under § 226.6(b)(3) in the list of “significant change[s] in account terms.” The Board stated in the proposal that it believes a reference to § 226.6(b)(3) is unnecessary, for several reasons. Section 226.6(b)(3) addresses disclosure of charges imposed as part of an open-end (not home-secured) plan. Certain charges imposed as part of a plan are specifically required to be disclosed in the account-opening table under § 226.6(b)(1) and (b)(2), while other charges imposed as part of the plan are not required or permitted to be disclosed in the table. Therefore, the 45-day advance notice requirement would continue to apply to charges that are identified in § 226.6(b)(3) that are also required to be disclosed in the account-opening table under § 226.6(b)(1) and (b)(2). In addition, § 226.9(c)(2)(iii) sets forth a special rule for notice of changes to charges imposed as part of the plan that are not required to be disclosed in the account-opening table. In particular, for charges imposed as part of the plan under § 226.6(b)(3) that are not required to be disclosed in the account-opening table under § 226.6(b)(1) and (b)(2), § 226.9(c)(2)(iii) requires a creditor to either, at its option (1) provide at least 45 days’ written advance notice before the change becomes effective, or (2) provide notice orally or in writing of the amount of the charge to an affected consumer at a relevant time before the consumer agrees to or becomes obligated to pay the charge.

Consumer group commenters objected to the existing rule set forth in § 226.9(c)(2)(iii), to the extent that it permits new fees that are not disclosed in the account opening table to be disclosed orally at a relevant time before the consumer agrees or becomes obligated to pay the charge. Consumer groups believe that the addition of a new fee, other than one-time fees for time-sensitive matters, should require a change in terms notice. However, for the reasons discussed in the supplementary information to the January 2009 Final Rule, the Board is not expanding the 45-day advance notice requirements to charges imposed as part of the plan under § 226.6(b)(3) that are not required to be disclosed in the account-opening table under § 226.6(b)(1) and (b)(2). *See, e.g.,* 74 FR 5273, 74 FR 5345.

The Board proposed one wording change to § 226.9(c)(2)(iii) and comment 9(c)(2)(iii)-1; the proposal would have replaced the word “may” with “must,” in order to clarify that increases in, or the introduction of new, charges imposed as part of the plan under § 226.6(b)(3) must be disclosed in accordance with § 226.9(c)(2)(iii). The Board received no

comments on this change, which is adopted as proposed.

Finally, unlike current § 226.9(c)(2)(i), the definition of “significant change[s] in account terms” in proposed § 226.9(c)(2)(ii) did not expressly reference the disclosures required by § 226.6(b)(5). Section 226.6(b)(5) requires that a creditor disclose, to the extent applicable, certain information regarding voluntary credit insurance, debt cancellation or debt suspension coverage, security interests, and a statement regarding the consumer’s billing rights. The disclosures regarding voluntary credit insurance and similar products and the statement of billing rights set forth in § 226.6(b)(5) are not terms of the account, but specific disclosures that must be given. Accordingly, given that these are not terms of the account, the Board noted in the proposal that there are no corresponding changes in terms for which it is appropriate to require advance notice.<sup>5</sup> In contrast, the acquisition of a security interest is expressly included in § 226.9(c)(2)(ii)’s definition of “significant change in account terms” for which 45 days’ advance notice must generally be provided. The Board received no comments on this aspect of the proposal, which is adopted as proposed.

The Board is also amending § 226.9(c)(2)(i)(A) to correct a technical issue; this amendment is not intended as a substantive change to the change-in-terms notice requirements. Consumer group commenters noted that in the February 2010 Final Rule, the Board created a new § 226.9(c)(2)(i)(B) to address change-in-terms notice requirements for changes agreed to by the consumer. As discussed in the supplementary information to the February 2010 Final Rule, new § 226.9(c)(2)(i)(B) generally included guidance that was formerly included in the commentary to § 226.9(c)(2), which was moved into the regulation for clarity. *See* 75 FR 7693. Section 226.9(c)(2)(i)(B) sets forth guidance regarding which changes are deemed to be “agreed to” by the consumer. Consumer group commenters on the November 2010 Proposed Rule expressed concerns that the retention in the February 2010 Final Rule of a separate reference to changes agreed to by the consumer in § 226.9(c)(2)(i)(A) could be read as creating a different,

<sup>5</sup> The Board notes that charges for voluntary credit insurance, debt cancellation or debt suspension coverage are “charges imposed as part of the plan” under § 226.6(b)(3)(ii)(F), and accordingly changes in the cost of such coverage are required to be disclosed in accordance with § 226.9(c)(2)(iii).

broader standard than the one set forth in § 226.9(c)(2)(i)(B). Accordingly, the Board is amending § 226.9(c)(2)(i)(A) to expressly cross-reference § 226.9(c)(2)(i)(B), in order to clarify that the guidance in § 226.9(c)(2)(i)(B) is intended to exclusively address what it means for a change to be “agreed to by the consumer.”

#### *9(c)(2)(iv) Disclosure Requirements*

As discussed above, the Board is amending § 226.9(c)(2)(ii) to expressly provide that changes to terms required to be disclosed under § 226.6(b)(4) are “significant change[s] in account terms.” The Board proposed several conforming changes to § 226.9(c)(2)(iv), which sets forth the disclosure requirements for the 45-day advance notice of a significant change in account terms. First, the Board proposed to amend § 226.9(c)(2)(iv)(A)(1) to provide that the notice must include a summary of changes made to terms required to be disclosed under § 226.6(b)(4). Second, the Board proposed to amend § 226.9(c)(2)(iv)(D)(1) to clarify the formatting requirements for the notice provided in advance of a change to a term required to be disclosed under § 226.6(b)(4). Section 226.9(c)(2)(iv)(D)(1) generally requires that the summary of changes included with a change-in-terms notice be in a tabular format, with headings and format substantially similar to any of the account-opening tables found in G-17 to appendix G. However, terms required to be disclosed under § 226.6(b)(4), such as the margin for a variable rate, are not permitted to be included in the account-opening table, and therefore would not be in a tabular format in the samples in G-17 to appendix G. Accordingly, the Board proposed to amend § 226.9(c)(2)(iv)(D)(1) to expressly state that the summary of a term required to be disclosed under § 226.6(b)(4) that is not required to be disclosed under § 226.6(b)(1) and (b)(2) need not be in a tabular format.

The Board received only one comment on this aspect of the proposal, from an industry commenter that supported this flexible approach to providing disclosures of changes to terms required to be disclosed under § 226.6(b)(4). Accordingly, the Board is adopting the changes to § 226.9(c)(2)(iv)(A)(1) and (c)(2)(iv)(D)(1) as proposed.

#### *Right To Reject*

The Board proposed several changes related to disclosure of the right to reject certain types of changes. When a creditor makes a significant change in account terms on a credit card account

under an open-end (not home-secured) consumer credit plan, § 226.9(c)(2)(iv)(B) generally requires the creditor to disclose certain information regarding the consumer's right to reject that change under § 226.9(h). Section 226.9(c)(2)(iv)(B) also lists several types of changes to which the right to reject does not apply, including a change in the balance computation method necessary to comply with § 226.54. The Board adopted this exemption in the February 2010 Final Rule in order to facilitate compliance with the limitations on the imposition of finance charges in § 226.54, which implemented the Credit Card Act's prohibition on the two-cycle balance computation method. *See* 75 FR 7696, 7730.

Because § 226.54 went into effect on February 22, 2010, the Board proposed to remove the exemption in § 226.9(c)(2)(iv)(B) for changes necessary to comply with § 226.54. In its place, the Board proposed to adopt an exemption stating that, when a fee has been reduced consistent with the Servicemembers Civil Relief Act (SCRA), 50 U.S.C. app. 501 *et seq.*, or a similar Federal or State statute or regulation, the right to reject does not apply to an increase in that fee once the statute or regulation no longer applies, provided that the amount of the increased fee does not exceed the amount of that fee prior to the reduction.

As discussed in greater detail below with respect to § 226.55(b)(6), the SCRA and some state statutes generally require creditors to reduce interest rates and fees for consumers who are in military service. When the SCRA or similar state statute ceases to apply, § 226.9(c) generally requires the creditor to provide 45 days' advance notice of any increase in a rate or fee. The right to reject does not apply to rate increases, but § 226.55(b)(6) limits the ability of a card issuer to increase the rate that applies to the existing balance on a credit card account under an open-end (not home-secured) consumer credit plan in these circumstances. Specifically, § 226.55(b)(6) provides that, if the SCRA requires a card issuer to reduce an interest rate on an existing balance when a consumer enters military service, the rate applied to that balance when the consumer leaves military service cannot exceed the rate that applied prior to military service. In other words, consumers cannot be charged higher rates once the SCRA ceases to apply than they were before the SCRA began to apply.

The Board understands that, in order to comply with the SCRA and similar

Federal or State statutes or regulations, many creditors reduce or cease to impose annual fees, late payment fees, and other types of fees while a consumer is in military service. Although the right to reject generally applies to increases in fees required to be disclosed under § 226.6(b)(1) and (b)(2) (such as annual fees and late payment fees), the Board believes that, when a consumer leaves military service and the legal requirements of the SCRA or a similar Federal or State statute or regulation cease to apply, it is appropriate to permit creditors to return fees to pre-existing levels. Accordingly, the Board proposed to exempt such increases from the right to reject, although the right to reject would continue to apply if a creditor sought to apply a fee that exceeded the amount of the fee prior to the consumer entering military service. Commenters generally supported this aspect of the proposal, which is adopted as proposed.

Section 226.9(c)(2)(iv)(B) also provides that the right to reject does not apply to changes to an annual percentage rate applicable to a consumer's account. As discussed above, the Board has amended the definition of "significant change in account terms" under § 226.9(c)(2)(ii) to expressly include changes to terms required to be disclosed under § 226.6(b)(4). Section 226.6(b)(4) requires disclosure of certain information regarding periodic rates that may be used to calculate interest. One industry commenter asked the Board to expressly provide that changes to terms required to be disclosed under § 226.6(b)(4) do not trigger the right to reject under § 226.9(c)(2)(iv)(B). The Board believes that the broad language of § 226.9(c)(2)(iv)(B), which refers to "a change in an annual percentage rate applicable to a consumer's account" generally encompasses changes to terms required to be disclosed under § 226.6(b)(4).<sup>6</sup> Accordingly, while the Board believes that the right to reject does not apply to most changes to terms required to be disclosed under § 226.6(b)(4), it is not adopting any amendments to the text of § 226.9(c)(2)(iv)(B) to address such changes.

#### Changes in Type of Rate

Comments 9(c)(2)(iv)-3 and -4 and comments 9(c)(2)(v)-3 and -4 clarify that, if a creditor is changing a rate applicable to a consumer's account from

a non-variable rate to a variable rate (or vice versa), the creditor must provide a notice pursuant to § 226.9(c) even if the new rate is lower than the prior rate. The Board proposed to revise this guidance to clarify that notice is not required pursuant to § 226.9(c)(2) when a lower rate is applied in connection with a promotional or other temporary rate program or a workout or temporary hardship arrangement, provided that the terms of that program or arrangement are disclosed consistent with § 226.9(c)(2)(v)(B) or (c)(2)(v)(D). In these circumstances, the Board believes that the 45-day notice requirement would unnecessarily delay application of a lower rate to a consumer's account in circumstances where § 226.9(c)(2)(v)(B) or (c)(2)(v)(D) generally require that the consumer be informed of the terms associated with the lower rate before it is applied to the account. Furthermore, when a promotional or temporary rate or workout or temporary hardship arrangement is applied to an account, the substantive limitations in § 226.55(b)(1) and (b)(5) protect consumers from unanticipated increases in the rates that apply to existing balances.

The Board also proposed to clarify that notice pursuant to § 226.9(c)(2) is not required when the creditor applies a lower rate in order to comply with the SCRA or a similar Federal or State statute or regulation. Finally, in order to eliminate redundancy and ensure consistent guidance, the Board proposed to replace comments 9(c)(2)(v)-3 and -4 with cross references to comments 9(c)(2)(iv)-3 and -4.

Commenters generally supported these proposed revisions, which are adopted as proposed. In addition, as suggested by consumer group commenters, the Board has added a cross reference in comment 9(c)(2)(iv)-4 to comment 55(b)(2)-4, which addresses the limitations in § 226.55(b)(2) on changing the rate that applies to a protected balance from a non-variable rate to a variable rate.

Finally, the Board has clarified that a creditor is not required to provide a notice under § 226.9(c) when changing a variable rate to a lower non-variable rate or a non-variable rate to a lower variable rate in order to comply with § 226.55(b)(4). Section 226.55(b)(4) permits a card issuer to increase the rate that applies to an existing credit card balance if the account becomes more than 60 days delinquent. However, if the consumer makes the next six required minimum payments on time, § 226.55(b)(4) requires the card issuer to lower the rate on the existing balance to

<sup>6</sup> The right to reject would apply, however, to changes to a balance computation method applicable to a consumer's account; the balance computation method is a required disclosure pursuant to both § 226.6(b)(2)(vi) and (b)(4)(i)(D).

the pre-existing rate. For example, assume that a credit card account became more than 60 days delinquent and that, after providing 45 days advance notice, the card issuer increased the rate on the existing balance from a 15% variable rate to a 30% non-variable penalty rate. If the consumer made the next six required minimum payments on time, § 226.55(b)(4) requires the card issuer to lower the rate that applies to the existing balance to the 15% variable rate. However, the card issuer is not required to provide 45 days advance notice before doing so.

#### 9(c)(2)(v) Notice Not Required

##### Temporary Rate Exception

Section 226.9(c)(2) generally requires that 45 days' advance notice be provided of significant changes in account terms for open-end (not home-secured) consumer credit plans. Several exceptions to this 45-day advance notice requirement are set forth in § 226.9(c)(2)(v). Section 226.9(c)(2)(v)(B) sets forth an exception for increases in annual percentage rates upon the expiration of a period of time, provided that prior to the commencement of that period, the creditor discloses to the consumer clearly and conspicuously in writing the length of the period and the annual percentage rate that will apply after that period. Section 226.9(c)(2)(v)(B)(2) requires that the disclosure of the length of the period and the rate that will apply after expiration of the period must be disclosed in close proximity and equal prominence to the first listing of the disclosure of the rate that applies during the specified period of time.

In November 2010, the Board proposed to clarify the proximity and prominence requirements for the disclosure of introductory rates that are disclosed at account opening. The Board noted that there is confusion regarding how to comply with the proximity and prominence rules in § 226.9(c)(2)(v)(B) when an introductory rate is being disclosed in the account-opening table. The rules in § 226.6(b) contain prescriptive formatting and font size requirements for the disclosures required to be provided in tabular form at account opening. Section 226.6(b)(1) requires that the tabular disclosure have headings, content, and format substantially similar to any of the applicable tables in G-17 in appendix G. In addition, § 226.6(b)(2)(i) requires that annual percentage rates for purchases be disclosed in the tabular disclosure provided at account opening in 16-point font. Section 226.6(b)(1)(i)

requires that annual percentage rates required to be disclosed pursuant to § 226.6(b)(2)(i), including introductory rates required to be disclosed under § 226.6(b)(2)(i)(F), be disclosed in bold text.

Sample G-17(C) contains a sample disclosure of an introductory rate on purchases, where the introductory and standard annual percentage rates are presented in bold 16-point font in accordance with § 226.6(b)(1)(i) and (b)(2)(i). However, the disclosure of the introductory period is displayed in 10-point font and is not presented in bold text, consistent with § 226.6(b). Accordingly, the Board sought to address confusion regarding whether the § 226.6(b) tabular disclosure would be deemed to comply with the formatting requirements in § 226.9(c)(2)(v)(B)(2), because the period is disclosed in a smaller font than the font in which the relevant rates are disclosed, and is not in bold text.

Specifically, the Board proposed to adopt a new comment 9(c)(2)(v)-10 which states that a disclosure of the information described in § 226.9(c)(2)(v)(B)(1) provided in the account-opening table in accordance with § 226.6(b) complies with the requirements of § 226.9(c)(2)(v)(B)(2), if the listing of the introductory rate in such tabular disclosure also is the first listing as described in comment 9(c)(2)(v)-6. The Board proposed to renumber existing comments 9(c)(2)(v)-10 through 9(c)(2)(v)-12 accordingly.

Industry commenters generally supported proposed comment 9(c)(2)(v)-10. These commenters indicated that permitting promotional rates to be disclosed in the account-opening table under § 226.9(c)(2)(v)(B), even if the duration of the period is disclosed in a smaller, non-bold font, would facilitate creditors' ability to continue to make beneficial promotional offers to consumers. However, several industry commenters objected to the language limiting comment 9(c)(2)(v)-10 to circumstances where the listing of the introductory rate in the tabular disclosure is the first listing of the rate. These commenters expressed particular concern regarding private label credit card programs that provide a cover page at account opening which includes a reference to the temporary rate offer. Accordingly, for such programs, commenters indicated that the account-opening table often may not be the first listing of the promotional rate. These commenters stated that the Board should permit lenders to comply with the disclosure requirement for temporary and introductory rates by including the required information in

the account-opening table provided pursuant to § 226.6(b) even if it is not the first listing.

The Board is adopting comment 9(c)(2)(v)-10 as proposed. The Board continues to believe that additional clarification is appropriate as to the relationship between the formatting requirements of §§ 226.9(c)(2)(v)(B)(2) and 226.6(b). The Board believes that if the information described in § 226.9(c)(2)(v)(B)(2) is included in the account-opening table provided pursuant to, and in compliance with, § 226.6(b), it should be deemed to meet the equal prominence and close proximity requirements of § 226.9(c)(2)(v)(B). The format and presentation of information in the account-opening table was informed by the Board's consumer testing, and the Board believes that the requirements of § 226.6(b) are appropriate and sufficient to convey key information regarding introductory rates to consumers.

The Board notes that § 226.9(c)(2)(v)(B)(2) and comment 9(c)(2)(v)-6, which were adopted in the February 2010 Final Rule, apply the close proximity and equal prominence requirements for the § 226.9(c)(2)(v)(B) disclosures to the first listing of the temporary rate. The Board adopted this "first listing" rule in response to concerns raised by a commenter that, as originally proposed, § 226.9(c)(2)(v)(B) could have been construed to apply the close proximity and equal prominence requirements to each disclosure of the promotional rate, not just the first listing. *See* 75 FR 7699. The Board proposed comment 9(c)(2)(v)-10, not as a reconsideration of the "first listing" rule set forth in § 226.9(c)(2)(v)(B)(2) and comment 9(c)(2)(v)-6, but to clarify the relationship between the formatting requirements of §§ 226.9(c)(2)(v)(B) and 226.6(b). The Board continues to believe that the "first listing" standard set forth in § 226.9(c)(2)(v)(B)(2) and comment 9(c)(2)(v)-6 is appropriate, to ensure that consumers notice the disclosures required under § 226.9(c)(2)(v)(B) by requiring that those disclosures be closely proximate and equally prominent to the most prominent disclosure of the temporary rate.

Consumer groups did not oppose proposed comment 9(c)(2)(v)-10 but urged the Board to also require that creditors comply with § 226.16(g) as part of compliance with in § 226.9(c)(2)(v)(B), especially when the first listing of the introductory rate is not in the account-opening table. However, the Board is not expressly requiring compliance with § 226.16(g) as a condition of the exception set forth in § 226.9(c)(2)(v)(B), for several reasons.

First, the requirements of § 226.16(g) apply independently of the change-in-terms provisions in § 226.9(c)(2). The Board is concerned that making compliance with the advertising requirements in § 226.16(g) a prerequisite for compliance with § 226.9(c)(2)(v)(B) could be misconstrued as suggesting that the requirements of § 226.16(g) do not otherwise independently apply. Second, § 226.16(g) applies to advertisements of an open-end (not home-secured) plan. The definition of advertisement is set forth in § 226.2(a) and related staff commentary; comment 2(a)(2)-1.ii.F expressly states that communications about an existing credit account (for example, a promotion encouraging additional or different uses of an existing credit card account) are not advertisements. In contrast, § 226.9(c)(2)(v)(B) applies to promotional rates offered on both new and existing accounts; therefore, any reference to compliance with § 226.16(g) would be inapplicable in cases where a creditor is utilizing the exception in § 226.9(c)(2)(v)(B) for a promotion offered on an existing account.

One commenter urged the Board to clarify, given an issuer's ability to combine application disclosures with account-opening disclosures, that placing the temporary rate information in the tabular disclosure provided pursuant to § 226.5a would meet the timing, proximity, and prominence requirements of § 226.9(c)(2)(v)(B). The Board believes that no additional clarification is necessary. In certain circumstances, comment 5a-2 permits the account-opening summary table described under § 226.6(b)(1) to be substituted for the disclosures required by § 226.5a. Accordingly, when an issuer combines application disclosures with account-opening disclosures, the disclosures being provided are the § 226.6(b) disclosures, to which comment 9(c)(2)(v)-10 already applies.

Comment 9(c)(2)(v)-5 sets forth guidance regarding the disclosure requirements for temporary rates when the temporary rate reduction is initially offered to the consumer by telephone. Comment 9(c)(2)(v)-5 states that the timing requirements of § 226.9(c)(2)(v)(B) are deemed to have been met, and written disclosures required by § 226.9(c)(2)(v)(B) may be provided as soon as reasonably practicable after the first transaction subject to a rate that will be in effect for a specified period of time (a temporary rate) if: (1) The consumer accepts the offer of the temporary rate by telephone; (2) the creditor permits the consumer to reject the temporary rate offer and have

the rate or rates that previously applied to the consumer's balances reinstated for 45 days after the creditor mails or delivers the written disclosures required by § 226.9(c)(2)(v)(B); and (3) the disclosures required by § 226.9(c)(2)(v)(B) and the consumer's right to reject the temporary rate offer and have the rate or rates that previously applied to the consumer's account reinstated are disclosed to the consumer as part of the temporary rate offer.

As discussed in the supplementary information to the February 2010 Final Rule, this rule for telephone offers of promotional rates is intended to ensure that consumers may take immediate advantage of promotions that they believe to be beneficial, while protecting consumers by allowing them to terminate the promotion and thus avoid adverse consequences, upon receipt of written disclosures. Consistent with the rationale discussed in the February 2010 Final Rule, the Board proposed to amend comment 9(c)(2)(v)-5.ii to provide that, in connection with telephone offers of temporary rates or fees,<sup>7</sup> the creditor need not permit the consumer to reject the temporary rate or temporary fee offer if the rate or rates or fee that will apply following expiration of the temporary rate do not exceed the rate or rates or fee that applied immediately prior to commencement of the temporary rate. The Board noted that, since such an offer never results in the increase in an interest rate or fee even on a prospective basis, it may be unnecessary to provide consumers with the opportunity to reject such an offer. The Board also proposed a conforming change to comment 9(c)(2)(v)-5.iii.

Several industry commenters supported the proposed amendment to comment 9(c)(2)(v)-5.ii. These commenters stated that it makes little sense to offer a consumer a right to reject a temporary rate or fee offer if the rejection can only result in the consumer's account being subject to higher fees or charges. Consumer group commenters, on the other hand, opposed the proposed amendment to comment 9(c)(2)(v)-5.ii. Consumer groups indicated that even if the rate that will apply after a temporary rate expires does not exceed the rate that applied immediately prior to commencement of the temporary rate, a consumer might wish to reject the promotional offer if he or she purchased goods without comprehending that the

promotional rate was temporary. These commenters stated that at a minimum, the Board should provide consumers with the right to return any goods without charge when the consumer bought goods based upon telephone disclosure of a promotional rate program.

The Board is adopting comment 9(c)(2)(v)-5.ii as proposed. The Board believes that it is not necessary to provide consumers with a right to reject a temporary rate or fee offer when the rate or fee that will apply upon expiration of the temporary offer does not exceed the rate or fee that applied immediately prior to commencement of the promotion. In these circumstances, consumers still must receive oral disclosures in advance of the terms of the promotion, including the period for which the reduced rate or fee will be in effect. An issuer that fails to provide these oral disclosures has not complied with § 226.9(c)(2)(v)(B) and must provide 45 days' advance notice prior to raising the rate or fee upon expiration of the promotion; in addition, in circumstances where § 226.55 applies, such issuers are prohibited from increasing the rate or fee applicable to existing balances. Finally, the Board believes that when the rate or fee that will be in effect after the promotion expires does not exceed the standard rate or fee in effect prior to the commencement of the promotion, this situation presents less potential for harm to consumers than when the rate or fee after the promotion expires will exceed the rate or fee in effect prior to commencement of the promotion.

Exception for Temporary Reductions in Fees

The Board also proposed to amend § 226.9(c)(2)(v)(B) to provide an exception to the advance notice requirements for increases in fees that occur after the expiration of a specified period of time. The Board declined to adopt a specific exception for temporary or promotional fee programs in the February 2010 Final Rule because the Credit Card Act did not contain such an exception and because an exception did not appear to be necessary. See 75 FR 7699. In the supplementary information to the February 2010 Final Rule, the Board noted that nothing in Regulation Z prohibits a creditor from providing notice of a future increase in a fee at the same time it temporarily reduces the fee; a creditor could provide information regarding the temporary reduction in the same notice, provided that it is not interspersed with the content required to be disclosed pursuant to § 226.9(c)(2)(iv). See 75 FR 7699.

<sup>7</sup> As discussed below, the Board proposed to extend the exception in § 226.9(c)(2)(v)(B) to apply to temporary fee reductions; accordingly, proposed comment 9(c)(2)(v)-5.ii applied both to temporary rate and temporary fee offers.

However, upon further review, the Board proposed in November 2010 to use its authority under TILA Section 105(a) to specifically address the advance notice requirements for temporary or promotional fees in order to encourage issuers to disclose and structure such programs in a consistent manner that enables consumers to understand the associated costs. Accordingly, the Board proposed to amend § 226.9(c)(2)(v)(B) to apply to increases in fees upon the expiration of a specified period of time. Thus, proposed § 226.9(c)(2)(v)(B) permitted a card issuer to increase a fee after a specified period of time without providing 45 days' advance notice, if the card issuer provides the consumer in advance with a clear and conspicuous written disclosure of the length of the period and the fee or charge that will apply after expiration of the period. In addition, the Board proposed to amend comments 9(c)(2)(v)-5 through 9(c)(2)(v)-7 to expressly refer to temporary fee offers.

In addition, for clarity, and for consistency with the proposed changes to § 226.9(c)(2)(v)(B), the Board also proposed to amend comment 9(c)(2)(v)-2, which addresses skip features offered in connection with open-end (not home-secured) consumer credit plans. Comment 9(c)(2)(v)-2 addresses the disclosures that must be given when a credit program allows consumers to skip or reduce one or more payments during the year or involves temporary reductions in finance charges. Comment 9(c)(2)(v)-2 was previously amended in the February 2010 Final Rule for conformity with the exception in § 226.9(c)(2)(v)(B) for temporary reductions in interest rates. In particular, the Board added a new comment 9(c)(2)(v)-2.ii that clarifies the notice requirements for temporary reductions in interest rates. See 75 FR 7702. Because the Board proposed to expand § 226.9(c)(2)(v)(B) to cover promotional fee offers in addition to promotional rate offers, the Board proposed in November 2010 to amend comment 9(c)(2)(v)-2.ii to also cover temporary reductions in fees; comment 9(c)(2)(v)-2.i would accordingly apply only to programs that permit a consumer to skip or reduce a payment.

Industry commenters generally supported the proposed amendment that would create an exception to the 45-day advance notice requirements for temporary fee arrangements disclosed in advance in accordance with § 226.9(c)(2)(v)(B). Commenters indicated that the proposed clarifications provide necessary guidance regarding the content of a

notice of a temporary fee, and stated that adopting the proposed amendments to § 226.9(c)(2)(v)(B) would help to facilitate the continued availability of temporary fee reductions.

Consumer group commenters expressed concerns regarding the proposed amendments to § 226.9(c)(2)(v)(B), but did not oppose promotional fee programs. Consumer groups indicated that it is important for consumers to receive advance notice when the period for a promotional fee expires and an increased fee will be imposed, and suggested that this is particularly necessary for promotional programs for annual fees. If a specific promotion provides, for example, that no annual fee will be imposed during the first year after account opening but that an annual fee will be imposed in subsequent years, consumer groups believe that consumers may forget the terms of the promotion during the first year and be unduly surprised when a fee is imposed in year two. Consumer groups urged the Board to require a notice stating that the post-promotional fee will, or may, be imposed in the next billing cycle, on the periodic statement for the billing cycle prior to expiration of the promotional period.

The Board is adopting the changes to § 226.9(c)(2)(v)(B) and the related staff commentary generally as proposed. The Board believes that it is appropriate to establish standardized disclosure requirements for promotional fee offers that permit creditors to provide advance disclosures of temporary fees, the period for which those temporary fees will be in effect, and the fee that will apply upon expiration of the temporary fee. Offers of temporarily reduced fees can benefit consumers and the Board believes that the amendments to § 226.9(c)(2)(v)(B) and the related staff commentary appropriately balance ensuring that consumers receive important information regarding the terms of a temporarily reduced fee with promoting the continued availability of offers that benefit consumers.

The Board notes that consumers will continue to receive advance notice prior to imposition of an annual fee on a credit or charge card account pursuant to § 226.9(e) in addition to the notice set forth in § 226.9(c)(2)(v)(B). The Board recognizes that § 226.9(e) requires only 30 days or one billing cycle's advance notice, rather than the 45 days' advance notice required for changes in terms under § 226.9(c)(2). However, § 226.9(e) does require that the renewal notice provided prior to imposition of an annual fee disclose how and when the cardholder may terminate credit availability under the account to avoid

paying the fee. Accordingly, the Board notes that for annual fees imposed on credit card accounts, the consumer will receive both the § 226.9(c)(2)(v)(B) notice prior to commencement of the promotion and a notice pursuant to § 226.9(e) immediately prior to imposition of the annual fee.

Several industry commenters urged the Board to provide additional guidance regarding the treatment under § 226.9(c)(2) of temporary waivers of penalty fees. These commenters stated that temporary penalty fee waivers should be excluded from all notice requirements, including disclosure requirements for promotional fee reductions. These commenters indicated that a temporary reduction of the penalty fee should not trigger notice to the consumer because the reduction is an accommodation made only in circumstances where the consumer has not complied with the terms of the account agreement. One commenter noted that penalty fee waivers or reductions are typically provided in connection with workout programs rather than as a part of a marketing solicitation or offer.

The Board agrees with commenters that it would be appropriate to provide an exception to § 226.9(c)(2) for penalty fee waivers offered in connection with workout or similar programs. The Board understands that such waivers of penalty fees are generally an accommodation to consumers and that creditors do not market such waivers, given that penalty fees may only be imposed if consumers violate the terms of the account. Section 226.9(c)(2)(v)(D) sets forth an exception to the 45-day advance notice requirements for certain increases in rates or fees or charges due to the completion of, or a consumer's failure to comply with the terms of, a workout or temporary hardship arrangement provided that the annual percentage rate or fee or charge applicable following the increase does not exceed the rate that applied prior to the commencement of the workout or temporary hardship arrangement. Accordingly, the final rule amends § 226.9(c)(2)(v)(D) and comment 9(c)(2)(v)-11 to refer to fees required to be disclosed pursuant to § 226.6(b)(2)(viii) (late payment fees), (b)(2)(ix) (over-the-limit fees), and (b)(2)(xi) (returned-payment fees). The Board believes that this expansion of the workout exception under § 226.9(c)(2)(v) will encourage the waiver or reduction of penalty fees as part of a workout or other temporary hardship arrangement, which may be beneficial to consumers who are subject to such arrangements.

### Variable Rate Exception

Section 226.9(c)(2)(v)(C) contains an exception to the 45-day advance notice requirements for increases in variable annual percentage rates in accordance with a credit card agreement that provides for a change in the rate according to operation of an index that is not under the control of the creditor and is available to the general public. In November 2010, the Board proposed to correct a typographical error in § 226.9(c)(2)(v)(C). In the proposal that led to the February 2010 Final Rule, proposed § 226.9(c)(2)(v)(C) referred to an increase “in accordance with a credit card or other account agreement.” In the February 2010 Final Rule, the phrase “or other account” was inadvertently deleted, without explanation in the supplementary information. The Board’s intent was for the exception in § 226.9(c)(2)(v)(C) to apply both to credit card accounts and to other open-end (not home-secured) consumer credit plans. Accordingly, the Board proposed to insert the phrase “or other account” into § 226.9(c)(2)(v)(C).

The exception to the advance notice requirements for an increase in a variable annual percentage rate is conditioned on the rate varying according to the operation of an index that is not under the control of the creditor and is available to the general public. Comment 9(c)(2)(v)–11 contains a cross-reference to comment 55(b)(2)–2 for guidance on when an index is deemed to be under the “card issuer’s” control. The Board noted in the proposal that there has been some confusion regarding the relationship between comment 55(b)(2)–2 and the exception set forth in § 226.9(c)(2)(v)(C). Comment 55(b)(2)–2 provides that an index is under a card issuer’s control if, among other things, the variable rate is subject to a fixed minimum rate or similar requirement that does not permit the variable rate to decrease consistent with reductions in the index. The substantive limitations on rate increases in § 226.55 and comment 55(b)(2)–2 apply only to credit card accounts under an open-end (not home-secured) consumer credit plan, while the advance notice requirements in § 226.9(c)(2) and the variable-rate exception in § 226.9(c)(2)(v)(C) apply to all open-end (not home-secured) consumer credit plans. Thus, the Board has been asked whether the variable-rate exception to the advance notice requirements set forth in § 226.9(c)(2)(v)(C) applies to an open-end (not home-secured) consumer credit plan that is not a credit card account, if

the variable rate is subject to a fixed minimum or “floor.”

The Board proposed to clarify that a variable rate plan that is subject to a fixed minimum or “floor” does not meet the conditions of the exception to the advance notice requirements set forth in § 226.9(c)(2)(v)(C). The Board stated that is appropriate to adopt a consistent interpretation of “an index that is not under the control of the creditor” for all open-end (not home-secured) credit. Accordingly, the Board proposed to amend comment 9(c)(2)(v)–11 (renumbered as comment 9(c)(2)(v)–12) to refer to guidance on when an index is deemed to be under “a creditor’s” control, rather than “the card issuer’s” control. The substantive provisions of § 226.55 would have continued to apply only to credit card accounts under an open-end (not home-secured) consumer credit plan; however, the proposed change clarified that 45 days’ advance notice is required prior to a rate increase on a variable-rate plan subject to a fixed minimum or floor, for all open-end (not home-secured) plans.

Consumer groups supported both aspects of the proposed changes to § 226.9(c)(2)(v)(C), and stated that variable rate “floors” should be discouraged for all types of open-end credit. Several industry commenters opposed the portion of the guidance that would apply consistent guidance regarding when a variable rate plan is deemed to be outside of a creditor’s control to all open-end (not home-secured) plans. These commenters stated that it is unnecessary to establish a consistent interpretation and that it would stifle competitive pricing. These commenters further argued that this clarification exceeds Congressional intent and the scope of the Credit Card Act.

The Board is adopting the changes to § 226.9(c)(2)(v)(C) and comment 9(c)(2)(v)–12 as proposed. The Board notes that it is adopting this clarification using its TILA Section 105(a) authority, rather than pursuant to the Credit Card Act, because this clarification pertains to open-end (not home-secured) credit that is not a credit card under an open-end (not home-secured) consumer credit plan. The Board continues to believe that, for consistency, it is appropriate to limit the variable rate exception to the change-in-terms notice requirements to only those rates that vary according to the operation of an index that is not under the control of the creditor and is available to the general public. The Board notes that for open-end (not home-secured) plans that are not credit card accounts under an open-end (not home-secured) consumer credit plan,

the regulation does not prohibit variable rates that are subject to a minimum or “floor,” but for such rates the creditor must comply with the advance notice requirements of § 226.9(c).

### 9(e) Disclosures Upon Renewal of Credit or Charge Card

Section 226.9(e), which implements TILA Section 127(d), sets forth the disclosures that card issuers must provide in connection with renewal of a consumer’s credit or charge card account. Section 226.9(e)(1) requires, in part, that a card issuer that has amended any term of a cardholder’s account required to be disclosed under § 226.6(b)(1) and (b)(2) that has not previously been disclosed to the consumer must mail or deliver a written renewal notice to the cardholder.

The Board did not propose any amendments to § 226.9(e) or its associated commentary in the November 2010 Proposed Rule. However, the Board has become aware of a typographical error in the title to comment 9(e)–10, which is currently entitled “Disclosure of changes in terms not required to be disclosed pursuant to § 226.6(b)(1) and (b)(2).” For conformity with the substance of the comment and the rule set forth in § 226.9(e), the Board is correcting the error by deleting the word “not” from the title of comment 9(e)–10.

### Section 226.10 Payments

#### 10(b) Specific Requirements for Payments

##### 10(b)(4) Nonconforming Payments

Section 226.10 sets forth rules regarding the prompt crediting of payments and the permissibility of assessing fees to make expedited payments. Section 226.10(a) generally requires that payments be credited to a consumer’s account as of the date of receipt, except that § 226.10(b) permits creditors to specify reasonable requirements for payments provided that those requirements enable most consumers to make conforming payments. Section 226.10(b)(4) addresses the crediting of payments that do not conform to the requirements specified by the creditor; if a creditor specifies requirements for the consumer to follow in making payments as permitted under § 226.10 but accepts a payment that does not conform to the requirements, such nonconforming payments must be credited within five days of receipt.

In November 2010, the Board proposed several amendments to § 226.10 intended to address confusion regarding the distinction between

conforming payments, which must be credited as of the date of receipt, and nonconforming payments, which must be credited within five days of receipt. Currently, § 226.10(b)(4) refers to requirements specified “on or with the periodic statement,” which may be read to suggest that payments received by any means not specified on or with the periodic statement generally are nonconforming payments. However, the rule in § 226.10(b) that permits a creditor to specify reasonable requirements for making payments is silent as to the manner in which these requirements must be communicated to consumers in order for such payments to be considered conforming payments. In addition, comment 10(b)–2 expressly provides that if a creditor promotes electronic payment via its Web site, any payments made via the Web site are generally conforming payments for purposes of § 226.10(b), which indicates that conforming payments are not only those payments made via methods specified on the periodic statement.

Specifically, the Board proposed to amend comment 10(b)–2 to provide that if a creditor promotes a specific payment method, any payments made via that method (prior to any cut-off time specified by the creditor to the extent permitted by § 226.10(b)(2)), are generally conforming payments for purposes of § 226.10(b). To provide further guidance, the Board also proposed to add two additional examples to comment 10(b)–2. Proposed comment 10(b)(2)–ii stated that if a creditor promotes payment by telephone (for example, by including the option to pay by telephone in a menu of options provided to consumers at a toll-free number disclosed on its periodic statement), payments made by telephone would generally be conforming payments for purposes of § 226.10(b). Similarly, proposed comment 10(b)(2)–iii stated that if a creditor promotes in-person payments, for example by stating in an advertisement that payments may be made in person at its branch locations, such in-person payments made at a branch or office of the creditor generally would be conforming payments for purposes of § 226.10(b).<sup>8</sup> In contrast, the supplementary information to the

proposal noted that proposed comment 10(b)–2 would not apply if the creditor makes a general promotional statement regarding payments that does not refer to a specific payment method, for example a statement that the creditor offers “many convenient payment options.” For conformity, the Board also proposed to amend § 226.10(b)(4), which addresses the treatment of nonconforming payments. The proposal amended § 226.10(b)(4) to provide that if a creditor specifies, on or with the periodic statement, requirements for the consumer to follow in making payments, but accepts a payment that does not conform to the requirements via a payment method that the creditor does not otherwise promote, the creditor shall credit the payment within five days of receipt.

Consumer group commenters generally supported the Board’s proposal to clarify that payments made via any specific method of payment promoted by the creditor generally are conforming payments for purposes of § 226.10. Consumer groups urged the Board to adopt a broad definition of what it means to “promote” a method of payment, and suggested that making any statement offering a particular payment option should constitute promotion. These commenters further urged the Board to clearly specify in the regulation that payments made via a promoted method are conforming payments.

Industry commenters generally supported the Board’s efforts to clarify the definition of a “conforming payment.” However, industry commenters expressed concerns regarding the Board’s specific guidance regarding what constitutes “promotion” of a method of payment. Two such commenters noted that the Board’s proposed examples were helpful, but noted that they were not fully explanatory; these commenters asked the Board to provide further guidance as to the definition of “promotes.” Several industry commenters were concerned that the Board’s proposal would treat all payment methods made available to consumers as promoted, and therefore as conforming payments. These commenters argued that there is a distinction between actively promoting a payment option and responding to a consumer inquiry as to permissible alternatives for making payments, and urged the Board to adopt a narrower approach. One commenter stated that the final rule should be revised to indicate that there must be active advertising or encouragement of use of a particular payment method, rather than a mere listing of a method, in order

for a method to be deemed promoted. This commenter stated that listing a payment option on a periodic statement or disclosing a payment option on a toll-free number should not, by itself, constitute promoting or advertising a particular payment option.

Several industry commenters identified specific payment methods that they believe should not be treated as “conforming payments.” Many of these commenters urged the Board not to treat payments made through third-party payment intermediaries as promoted payment methods that constitute conforming payments. These commenters stated that a consumer might, for example, ask a customer service representative of the issuer for information about payment options. In response, the issuer’s representative might provide the consumer with a list of such options that includes, among others, a third-party payment option. The commenters stated that the use of the third-party payment option should not be considered a promoted payment option, because the card issuer has no control over the receipt and handling of the payment through that third party. Commenters noted that there might be particular operational concerns and costs associated with treating such payments as conforming and noted that some card issuers might cease to disclose such payment methods among their suggested payment alternatives.

One other industry commenter indicated that the Board should clarify that payments made to a debt management program, a portion of which may ultimately be sent to a card issuer, should not be considered conforming payments. This commenter expressed concern that the required disclosure pursuant to § 226.7(b)(12)(i)(E) of information regarding credit counseling services might be deemed to constitute promotion of debt management agencies. This commenter also asked the Board to clarify that payments made to third-party collection agencies do not constitute conforming payments. This commenter noted that a cardholder’s account must become delinquent before payments may be made to a third party collection agency and that issuers would accordingly be unlikely to promote third party collection agencies as a payment method.

The Board continues to believe that additional clarification is appropriate regarding the distinction between conforming and nonconforming payments, in order to facilitate compliance with the rule and to ensure that payments are posted promptly in accordance with consumer expectations

<sup>8</sup> The Board notes that the requirements of § 226.10(b)(3), when applicable, are not conditioned on whether the card issuer promotes in-person payments at its branches or offices. Section 226.10(b)(3) applies to credit card accounts under an open-end (not home-secured) consumer credit plan and generally requires that payments made in person at a branch or office of a card issuer that is a financial institution be considered received on the date on which the consumer makes the payment.



and the intent of TILA Section 164. TILA Section 164, as amended by the Credit Card Act, provides in part that payments received from a consumer for an open-end consumer credit plan shall be posted promptly to the account as specified in regulations of the Board. The Board believes that, if a creditor promotes a specific method of making payments, the intent of TILA Section 164 is best effectuated by a rule that requires payments made by that method to be credited as of the date of receipt. The Board believes that if a creditor promotes that payments may be made via a certain method, it would be inappropriate to permit the creditor to delay crediting such payments for five days after receipt.

Accordingly, the Board is adopting the amendments to comment 10(b)–2 and § 226.10(b)(4) generally as proposed. However, § 226.10(b)(4) has been restructured without intended substantive change from the proposal, to more clearly provide that payments made via a promoted method are conforming payments. For the reasons discussed above, the Board is adopting a new § 226.10(b)(4)(ii) which states that if a creditor promotes a method for making payments, such payments shall be considered conforming payments under § 226.10(b) and shall be credited to the consumer's account as of the date of receipt, except when a delay in crediting does not result in a finance or other charge.

The Board acknowledges, however, that additional guidance would be helpful as to whether certain actions by the creditor constitute promotion of a particular payment method. The Board believes that as a practical matter, not every payment method made available or disclosed to consumers is “promoted,” and accordingly is declining to adopt a rule providing that every statement offering a particular payment option constitutes promotion. Whether promotion has occurred is a fact-specific determination and, accordingly, the Board believes that “promotion” is best defined by a set of illustrative examples, including those examples that were proposed in November 2010 and are being adopted as part of comment 10(b)–2.

In addition, the Board is adopting a new comment 10(b)–2.iv to address payments made via a third-party payment method. Comment 10(b)–2.iv states that if a creditor promotes that payments may be made through an unaffiliated third party, such as by disclosing the Web site address of that third party on the periodic statement, payments made via that third party's Web site generally are conforming

payments for purposes of § 226.10(b). In contrast, if a customer service representative of the creditor confirms to a consumer that payments may be made via an unaffiliated third party, but the creditor does not otherwise promote that method of payment, § 226.10(b) permits the creditor to treat payments made via such third party as nonconforming payments in accordance with § 226.10(b)(4). The Board believes that if a creditor advertises or prominently discloses a third-party payment method on the periodic statement, it would be inconsistent with consumer expectations for payments made by that method to be credited only after five days. However, the Board acknowledges that same-day crediting of payments made via unaffiliated third parties may raise special operational concerns and that mere confirmation by a customer service representative that a payment may be made via a specific third party does not by itself constitute “promotion.”

The Board is not adopting any additional guidance at this time regarding payments made to debt management programs or third-party collection agencies. The Board believes that whether a payment must be treated as conforming is best determined by looking at whether the creditor promotes the payment method rather than to the identity of the party accepting the payment. Accordingly, a payment made to a debt management program or third-party collection agency would not constitute a conforming payment unless the creditor promotes that method of payment. In addition, the required disclosure pursuant to § 226.7(b)(12)(i)(E) of information regarding credit counseling services does not by itself constitute promotion of debt management programs as payment methods. The disclosure required pursuant to § 226.7(b)(12)(i)(E) is a general statement regarding the availability of credit counseling services; as set forth on Model Forms G–18(C), this disclosure consists solely of a toll-free telephone number and a statement that the consumer may call this number for more information about credit counseling services. The required disclosure does not suggest that a consumer may make payments via this toll-free number and, accordingly, the Board does not believe that this constitutes promotion of payment through a debt management program. In addition, while the Board believes it will depend on the specific facts and circumstances in any given case, the Board agrees with commenters that creditors do not generally promote

payments via third party collection agencies, because promotion of such payments would entail promoting that consumers may permit their accounts to become delinquent.

#### *10(e) Limitations on Fees Related to Method of Payment*

Section 226.10(e), which implements TILA Section 127(l), generally prohibits a card issuer from imposing a separate fee for allowing consumers to make a payment by any method, unless such payment method involves expedited service by a customer service representative of the card issuer. The Board understands that card issuers may use third-party service providers to provide payment-related services on behalf of the issuer, such as receiving or processing payments from consumers. In some circumstances, in lieu of the card issuer imposing a fee for making a payment, the third-party service provider may charge consumers a fee for making a payment. Proposed comment 10(e)–4 clarified that third-party service providers or other third parties who receive payments on behalf of a card issuer are prohibited from charging a separate fee for payment, except as otherwise permitted by paragraph (e).

Several industry commenters requested that the Board clarify that the proposal does not apply to independent payment services which receive payments on behalf of the consumer and transmit the payments to an issuer at the direction of the consumer. In addition, one commenter asserted that the restriction on imposing a fee in paragraph (e) should not apply to third parties simply because the issuer makes administrative arrangements to receive payments through a third party or arranges for a discounted payment rate for customers to make a payment through a third party. Commenters expressed concern that the proposal would inhibit innovation in or availability of payment methods. One commenter also requested further clarification regarding payments initiated from a deposit account at a financial institution that offers bill payment services and also issues credit cards.

Consumer group commenters generally supported the proposed clarification. A member of Congress also supported the proposed clarification and asserted that permitting third-party service providers to charge a fee to allow a consumer to make a payment would undermine the intent of the Credit Card Act, which adopted TILA Section 127(l).

Based on the comments and further analysis, the Board believes that it

would be inconsistent with the intent of the Credit Card Act for consumers to pay a separate fee for making a payment through a third party that provides payment-related services, such as collecting, receiving, or processing a payment, on behalf of an issuer, unless the issuer itself would be permitted to charge the fee. Accordingly, in order to effectuate the purposes of the Credit Card Act and to prevent circumvention, the Board is revising § 226.10(e) and adopting comment 10(e)-4 with revisions and illustrative examples. The Board is adopting these amendments in order to clarify that a third party that collects, receives, or processes payments on behalf of an issuer is prohibited from charging a consumer a separate fee for making a payment, except as otherwise permitted by paragraph (e).

For example, if an issuer uses a service provider to receive, collect, or process payments made through the issuer's Web site or made through an automated telephone payment service, the limitation in § 226.10(e) applies because the third party is processing or receiving payments on behalf of the card issuer. In contrast, however, if a consumer makes a payment to the card issuer from a checking account at a depository institution using a payment service provided by the depository institution, the limitation in § 226.10(e) would not apply because the depository institution is not collecting, receiving, or processing a payment on behalf of the card issuer.

#### 10(f) Changes by Card Issuer

The Board proposed to replace a reference to "consumer" in comment 226.10(f)-3.ii with "card issuer" in order to correct a typographical error. The Board received no significant comment on this aspect of the proposal, which is adopted as proposed.

#### Section 226.12 Special Credit Card Provisions

##### 12(c) Right of Cardholder to Assert Claims or Defenses Against Card Issuer

Section 226.12(c)(1) provides that, when a cardholder asserts a claim or defense against a card issuer, the cardholder may withhold payment up to the amount of credit outstanding for the property or services that gave rise to the dispute and any finance or other charges imposed on that amount. Comment 12(c)-4 clarifies that the amount of the claim or defense that the cardholder may assert shall not exceed the amount of credit outstanding for the disputed transaction at the time the cardholder first notifies the card issuer or the person honoring the credit card of the

existence of the claim or defense. It further clarifies that, to determine the amount of credit outstanding, payments and other credits shall be applied to: Late charges in the order of entry to the account; then to finance charges in the order of entry to the account; and then to any other debits in the order of entry to the account. It also clarifies that, if more than one item is included in a single extension of credit, credits are to be distributed pro rata according to prices and applicable taxes. Although the February 2010 Final Rule moved this language into the commentary from a footnote to § 226.12, the guidance itself remained unchanged.

The Board understands that there has been some confusion about the interaction between the guidance on applying payments in comment 12(c)-4 and the payment allocation requirements in § 226.53. For credit card accounts under an open-end (not home-secured) consumer credit plan, § 226.53 generally requires card issuers to apply payments above the minimum first to the balance with the highest rate. However, comment 53-3 clarifies that, when a consumer has asserted a claim or defense against a card issuer pursuant to § 226.12(c), the card issuer must apply any payment above the minimum in a manner that avoids or minimizes any reduction in the amount subject to that claim or defense. Illustrative examples are provided.

In order to remove any inconsistency and to facilitate compliance, the Board proposed to revise comment 12(c)-4 to clarify that, with respect to credit card accounts under an open-end (not home-secured) consumer credit plan, § 226.53 and the guidance in comment 53-3 control. However, with respect to other types of credit card accounts (such as credit cards that access home-equity plans), the Board proposed to retain the long-standing guidance in comment 12(c)-4.

Commenters generally supported the proposed revisions to comment 12(c)-4, which—except as discussed below—are adopted with non-substantive, organizational changes. One industry commenter noted that some card issuers use a single platform to service all types of credit card accounts, regardless of whether an account is a credit card account under an open-end (not home-secured) consumer credit plan subject to § 226.53. This commenter requested clarification that, for purposes of comment 12(c)-4, issuers are permitted to apply a single set of payment allocation procedures to all credit card accounts by following § 226.53 and comment 53-3. Because a card issuer's voluntary compliance with the guidance

in comment 53-3 will generally minimize the assessment of interest charges and any reduction in disputed amounts, the Board has revised comment 12(c)-4 to provide the requested guidance.

#### Section 226.13 Billing Error Resolution 13(c) Time for Resolution; General Procedures

Section 226.13(c)(2) generally requires a creditor to complete the billing error investigation procedures within two billing cycles (but no later than 90 days) after receiving a billing error notice. To ensure that creditors promptly complete their investigations under TILA, the Board adopted a new comment 13(c)(2)-2 in the February 2010 Final Rule to clarify that a creditor must conclusively determine whether an error occurred within two complete billing cycles (but in no event later than 90 days) after receiving a billing error notice. Once this period has expired, the comment further clarified that the creditor may not reverse any amounts previously credited for an asserted billing error, even if the creditor subsequently obtains evidence indicating that the billing error did not occur as asserted.

Since adoption of the comment, the Board has received questions regarding whether § 226.13(c)(2) would prohibit a creditor from reversing amounts previously credited by the creditor after conclusion of the two billing cycle time frame if the consumer subsequently receives a credit in the amount of the error from the merchant or person that had honored the credit card. Such an occurrence might arise, for example, because the error investigation time frames under card network rules provide merchants additional time beyond the time frame under § 226.13 to respond to a consumer error claim. As a result, a merchant may not issue a credit to the consumer's account until after the creditor has already resolved the error claim in the consumer's favor in order to comply with the time frame established under Regulation Z. In those cases, the consumer could receive more than one credit for the same billing error, one from the creditor and another from the merchant or other person honoring the credit card.

The purpose of the billing error resolution time frame is to enable consumers to have their error claims investigated and resolved promptly. That is, TILA Section 161, as implemented by § 226.13, is intended to bring finality to the billing error resolution process, and to avoid the potential of undue surprise for consumers caused by the reversal of

previously credited funds when a creditor fails to complete its investigation in a timely manner. In contrast, the potential for consumer harm would not arise when a consumer has already been made whole for the error by the person honoring the credit card. In such a case, the Board believes that the creditor should be permitted to reverse amounts previously credited by the creditor to correct the error in order to avoid giving the consumer a windfall for that transaction.

Accordingly, the Board proposed to revise comment 13(c)(2)–2 to clarify that the requirement to complete an error investigation within two billing cycles does not prevent a creditor from reversing amounts it has previously credited to a consumer's account in circumstances where a consumer's account has been credited more than once for the same billing error. The proposed comment further clarified that the reversal of the credit by the creditor is appropriate so long as the total amount of the remaining credits is equal to or more than the amount of the error and the consumer does not incur any fees or other charges as a result of the timing of the creditor's reversal.

Industry and consumer group commenters supported these revisions, which are adopted as proposed. Accordingly, to ensure compliance with the requirements of § 226.13, a creditor should delay the reversal of the amounts the creditor has previously credited to the consumer's account until after the subsequent merchant credit has posted to the consumer's account. An illustrative example is set forth in the comment.

#### *Section 226.14 Determination of Annual Percentage Rate*

##### *14(a) General Rule*

The Board proposed to clarify the effect of a leap year on determining the annual percentage rate for disclosures required for open-end (not home-secured) credit accounts. Proposed comment 14(a)–6 clarified that a creditor generally may disregard any variance in the annual percentage rate which occurs solely by reason of the addition of February 29 in a leap year. For example, a creditor may use 365 days as the number of periods in a leap year when computing an annual percentage rate. In addition, if an annual percentage rate is computed using 366 days as the number of periods in a leap year, a variance in rate which occurs solely because of the addition of February 29 in the annual percentage rate computation would not trigger disclosure and other requirements

under §§ 226.9 and 226.55. One industry commenter supported the Board's proposed clarification. The Board believes that the clarification promotes accuracy in the disclosure of annual percentage rates and minimizes potential consumer confusion and operational burden for creditors. Accordingly, the Board is adopting comment 14(a)–6 as proposed.

#### *Section 226.16 Advertising*

##### *16(g) Promotional Rates and Fees*

Section 226.16(g) currently sets forth the requirements for advertisements of promotional or introductory rates on open-end (not home-secured) plans. In general, § 226.16(g) requires that certain advertisements of promotional or introductory rates state the promotional period, post-promotional rate, and, in some cases, the term "introductory" or "intro," in order to promote consumer understanding of the terms of such a promotional or introductory rate offer. As discussed elsewhere in this supplementary information, the Board is adopting changes to §§ 226.9(c)(2) and 226.55 to implement additional disclosure requirements and limitations for offers of temporary reduced or promotional fees. The Board proposed conforming changes to § 226.16(g) to require that certain advertisements of promotional fees also state the promotional period, post-promotional fee, and, in some cases, the term "introductory" or "intro," in order to promote consumer understanding of the terms of such promotional or introductory fee offers. The Board proposed these changes using its authority under TILA Section 105(a) to effectuate the purposes of TILA.

The disclosure requirements under proposed § 226.16(g) generally applied to "promotional fee[s]," as defined in new § 226.16(g)(2)(iv). In particular, proposed § 226.16(g)(2)(iv) defined "promotional fee" as a fee required to be disclosed under § 226.6(b)(1) and (b)(2) on an open-end (not home-secured) plan for a specified period of time that is lower than the fee that will be in effect at the end of that period. Accordingly, the proposed advertising requirements for promotional fee offers applied only when the promotional fee being offered is a fee required to be disclosed in the account-opening table provided pursuant to § 226.6(b). As noted in the November 2010 Proposed Rule, based in part on the Board's consumer testing, § 226.6(b)(1) and (b)(2) require disclosure of the fees that are the most important to consumers. Accordingly, the Board believes that these key fees are those for which a creditor is the

most likely to advertise a promotion. In addition, the application of the § 226.16(g) disclosure requirements to fees required to be disclosed pursuant to § 226.6(b)(1) and (b)(2) is consistent with the approach that the Board has taken in § 226.9(c)(2)(ii) when defining "significant changes in account terms." The Board also proposed several additional amendments to § 226.16(g) and the associated commentary in order to conform the advertising disclosures for promotional fees to the advertising disclosures for promotional rate offers in § 226.16(g).

Commenters on this aspect of the proposal generally supported the proposed amendments to § 226.16(g) that would impose advertising requirements similar to those for promotional rate offers on promotional fees. Accordingly, the Board is adopting amendments to § 226.16(g) and the related commentary generally as proposed. The Board continues to believe that requiring that creditors clearly disclose the conditions of a promotional fee offer will promote the informed use of credit by consumers.

One commenter stated that the Board should revise the definition of "promotional fee" in proposed § 226.16(g)(2)(iv) to clarify that a promotional fee offer may be limited to a specific balance or specific transaction. The Board agrees that it is appropriate to clarify that a promotional fee offer may be limited in this manner and notes that such a limitation would be consistent with the definition of "promotional rate" in § 226.16(g)(2)(i). Accordingly, the final rule defines "promotional fee" as a fee required to be disclosed under § 226.6(b)(1) and (b)(2) applicable to an open-end (not home-secured) plan, or to one or more balances or transactions on an open-end (not home-secured) plan, for a specified period of time that is lower than the fee that will be in effect at the end of that period for such plan or types of balances or transactions. The Board notes that as adopted, § 226.16(g)(2)(i) clarifies that promotional fees may apply either to the plan as a whole, such as an annual fee, or to particular balances or transactions, such as a balance transfer fee.

The Board has included a reference to "types" of balances or transactions in § 226.16(g)(2)(i) to reflect the fact that a creditor may structure an introductory fee offer such that a creditor will waive or reduce a fee only for one or more specific transactions, while other transactions of the same type will be subject to a standard fee set forth in the account agreement. In such circumstances, the waived or reduced fee is nonetheless a "promotional fee"

for purposes of § 226.16(g)(2)(i). For example, a card issuer may waive the balance transfer fee on any balances transferred at account opening; for other balance transfers, the issuer imposes a standard balance transfer fee of 3% of the amount of the balance. Although no fee will be imposed on the balance transfer made pursuant to the introductory offer, because other transactions of the same type are subject to a standard 3% fee, the \$0 fee imposed on the balance transferred at account opening constitutes a “promotional fee” pursuant to § 226.16(g)(2)(i).

Several industry commenters objected to the Board’s proposal to require creditors to disclose the term “introductory” or “intro” in immediate proximity to each listing of the introductory fee in a written or electronic advertisement pursuant to proposed § 226.16(g)(3). These commenters asked the Board to consider providing additional flexibility, to permit creditors to use phrases such as “no annual fee for the first year” or “\$40 annual fee waived for the first year,” and noted that they believe these phrases to be more understandable and succinct than use of the term “introductory,” as required by the proposal. One commenter stated that for one-time fees (such as a waiver of balance transfer fees associated with the application), the term “introductory” would not add value to the consumer, because there will never be a balance transfer fee associated with the specific balance transfer that was the subject of the promotional fee offer.

The Board is adopting the requirement to use the term “introductory” or “intro,” as proposed, in connection with written or electronic advertisements of introductory fees. The Board believes that having consistent rules for advertisements of introductory rates and introductory fees will promote consumer understanding of introductory fees. In particular, the Board has concerns that permitting different terminology for introductory fees than introductory rates may detract from consumer understanding that introductory rates, like introductory fees, being offered only for a limited time or on a particular transaction or transactions. Accordingly, the Board is not revising § 226.16(g)(3) to permit statements such as “no annual fee for the first year” and “\$40 annual fee waived for the first year,” and the final rule requires, consistent with the proposal, that issuers use the word “introductory” or “intro” to highlight the temporary nature of such offers.

#### Section 226.30 Limitation on Rates

The Board proposed to make a technical correction to comment 30–8.i.C to correct a typographical error. The Board did not receive any significant comments on this aspect of the proposal, which is adopted as proposed.

#### Section 226.51 Ability to Pay

The Credit Card Act and the Board’s February 2010 Final Rule

In its February 2010 Final Rule, the Board adopted § 226.51, which implements the provisions of the Credit Card Act that require card issuers to assess a consumer’s ability to pay before opening a new credit card account or increasing the credit limit on an existing account. Section 226.51(a) implements TILA Section 150, which provides that “[a] card issuer may not open any credit card account for any consumer under an open end consumer credit plan, or increase any credit limit applicable to such account, unless the card issuer considers the ability of the consumer to make the required payments under the terms of such account.” Section 226.51(b) implements TILA Section 127(c)(8), which prohibits a card issuer from opening a credit card account for a consumer who is under the age of 21 unless the consumer has submitted a written application that meets certain requirements. Specifically, the application must require either: (1) “submission by the consumer of financial information, including through an application, indicating an independent means of repaying any obligation arising from the proposed extension of credit in connection with the account”; or (2) the signature of a cosigner who has such means, is 21 or older, and assumes joint liability for the account.<sup>9</sup>

The Board generally intended § 226.51 to establish consistent standards for evaluating a consumer’s ability to pay. Specifically, § 226.51 requires that card issuers establish and maintain reasonable written policies and procedures to consider the income or assets and the current obligations of all consumers, regardless of age. See § 226.51(a)(1)(ii), (b)(1)(i), and (b)(2)(ii)(B). For all consumers, a card issuer must consider either the ratio of debt obligations to income, the ratio of debt obligations to assets, or the income

<sup>9</sup> Section 226.51(b) also implements TILA Section 127(p), which requires that, when a cosigner has assumed joint liability for a credit card account issued to an underage consumer, the account’s credit limit may not be increased unless the cosigner approves in writing, and assumes joint liability for, the increase.

the consumer will have after paying debt obligations. See *id.* Furthermore, regardless of a consumer’s age, it would be unreasonable for a card issuer not to review any information about a consumer’s income, assets, or current obligations, or to issue a credit card to a consumer who does not have any income or assets. See *id.*

Section 226.51 does not require card issuers to verify a consumer’s income or assets before opening a new account or increasing the credit limit on an existing account. Instead, a card issuer may consider a consumer’s income or assets based on information from a variety of sources, including information provided by a consumer on a credit card application. See comment 51(a)(1)–4. In the February 2010 Final Rule, the Board stated that verification was not required by TILA Section 150 and could be burdensome for both consumers and card issuers, especially when accounts are opened at point of sale or by telephone. For example, a consumer who wants to open a credit card account in a store to get a discount or a promotional rate on a purchase is unlikely to be carrying paystubs or other documents that verify his or her income. Similarly, because these types of documents typically contain personally identifiable information about the consumer, the card issuer would need to establish procedures for safeguarding that information. The Board concluded that these burdens outweighed the benefits of requiring verification because, unlike the subprime mortgage market, there was no evidence of widespread inflation of consumers’ incomes in the credit card market. The Board also noted that, because credit card accounts are generally unsecured, card issuers have the incentive to verify income when either the information supplied by the consumer is inconsistent with the data the card issuer has already obtained or when the risk in the amount of the credit line warrants such verification. See 75 FR 7721.

#### November 2010 Proposed Rule

Some card issuers request on their application forms that applicants provide their “income” or “salary,” while other issuers request that applicants provide their “household income.” In the November 2010 Proposed Rule, the Board acknowledged that there has been some confusion as to whether information provided by a consumer in response to a request for “household income” can be used by a card issuer to satisfy the requirements of § 226.51. In particular, the Board noted that there has been uncertainty as to whether

§ 226.51 established different standards for underage and adult consumers with respect to the consideration of household income and assets.

In order to resolve this confusion, the November 2010 Proposed Rule would have amended § 226.51 to require that, regardless of the consumer's age, a card issuer must consider the consumer's independent ability to make the required payments. The Board further proposed to clarify in a revised comment 51(a)(1)–4 that consideration of information regarding the consumer's household income or assets does not by itself satisfy this requirement. Thus, if a card issuer requested on its application forms that applicants state their "household income," the proposed rule generally would not have been permitted the issuer to use the income information provided by an applicant to satisfy the ability-to-pay requirement. In contrast, however, the income information provided by an applicant could be used if a card issuer requested on its application forms that applicants simply state their "income" or "salary."

#### Comments

Consumer group commenters supported the proposed rule, noting that it would limit card issuers' ability to extend credit to consumers who do not have sufficient income or assets and must rely on the income or assets of a spouse or other household member who is not liable on the account. In particular, these commenters expressed concern that, while a married couple may have sufficient collective income to make the required payments on their credit card debts during the marriage, the spouse who is solely liable for those debts may not have sufficient income to make the payments if the marriage ends. Thus, they argued, consumers and issuers are better protected if spouses apply jointly and are collectively liable for credit card debt incurred during a marriage.

Comments from members of Congress, credit card issuers, retailers, trade associations, and individual consumers generally supported applying the proposed limitations on the consideration of spousal and other household income when an applicant or account holder is under the age of 21. However, these commenters strongly objected to the application of these limitations to consumers who are 21 or older. They argued that this aspect of the proposed rule was inconsistent with the Credit Card Act and the Board's Regulation B and would reduce access to credit, particularly for married women who do not work outside the home.

#### Final Rule

Pursuant to its authority under TILA Section 105(a) and Section 2 of the Credit Card Act, the Board is generally adopting the amendments to § 226.51 and its commentary as proposed. Specifically, the Board is amending § 226.51 to require that a card issuer consider a consumer's independent ability to make the required payments on a credit card account, regardless of the consumer's age. Furthermore, the Board is revising comment 51(a)(1)–4 to clarify that a card issuer may not use the income or assets of a person who is not liable for debts incurred on the account to satisfy the requirements of § 226.51, unless a Federal or State statute or regulation grants a consumer who is liable on the account an ownership interest in such income or assets. Thus, if a card issuer prompts an applicant to provide his or her "household income" on a credit card application, the card issuer cannot rely solely on the information provided by an applicant to satisfy the requirements of § 226.51. Instead, the card issuer would need to obtain additional information about an applicant's independent income (such as by contacting the applicant). However, if a card issuer requests that applicants provide their income without reference to household income (such as by requesting "income" or "salary"), the issuer may rely on the information provided by applicants to satisfy the requirements of § 226.51.

As discussed below, the Board believes that this final rule effectuates the purpose of the Credit Card Act's ability-to-pay requirement by protecting consumers from incurring unaffordable levels of credit card debt. The following discussion also addresses concerns raised by commenters.

*Consistency with the Credit Card Act.* The Board believes that applying an independent ability-to-pay requirement to consumers age 21 and older is consistent with both the language and the intent of TILA Section 150. Specifically, TILA Section 150 requires card issuers to consider "the ability of the consumer to make the required payments" (emphasis added), which indicates that Congress intended card issuers to consider only the ability to pay of the consumer or consumers who are responsible for making payments on the account. Thus, it would be inconsistent with TILA Section 150 to permit card issuers to establish a consumer's ability to pay based on the income or assets of individuals who are not liable for debts incurred on the account.

Some industry commenters argued that the Credit Card Act's use of the term "independent" in TILA Section 127(c)(8)(B)(ii) but not in TILA Section 150 indicates Congress' intent to establish a less stringent standard for consideration of spousal or other household income when the consumer is 21 or older. However, as discussed above, the Board believes that interpreting the Credit Card Act to permit card issuers to establish a consumer's ability to pay based on the income or assets of individuals who are not responsible for making payments on the account would be inconsistent with the language and intent of TILA Section 150. Furthermore, the Board believes that it would be contrary to the intent of the Credit Card Act to interpret the differences between TILA Section 127(c)(8)(B)(ii) and TILA Section 150 as limiting the Board's authority to establish reasonable standards for evaluating a consumer's ability to pay.<sup>10</sup>

Other commenters argued that a spouse who has access to household income has the "ability \* \* \* to make the required payments," even if the spouse does not have a legal ownership interest in the income. Under this interpretation, if the income of an applicant's spouse is deposited into a checking or other account to which the applicant has access, the applicant would have the ability to use that income to make the required payments. The Board agrees that TILA Section 150 could be interpreted in this manner. However, this interpretation could not be limited to circumstances involving spouses without requiring card issuers to treat unmarried consumers less favorably than married consumers, which would be inconsistent with the Equal Credit Opportunity Act, 15 U.S.C. 1691 (ECOA), as implemented in the Board's Regulation B (12 CFR Part 202).<sup>11</sup>

Furthermore, the Board is concerned that, if this interpretation were applied to all consumers regardless of marital status, it could encourage consumers to provide—and card issuers to extend credit based on—overstated income information. Specifically, a consumer may understand a credit card application asking for "household income" to request the income of *all*

<sup>10</sup> See Credit Card Act § 2 (granting the Board the authority to "issue such rules \* \* \* as it considers necessary to carry out this Act. \* \* \*").

<sup>11</sup> Regulation B prohibits a creditor from discriminating against an applicant on a prohibited basis (which includes marital status) regarding any aspect of a credit transaction. See 12 CFR 202.2(z), 202.4(a). Under Regulation B, a creditor discriminates against an applicant if it treats the applicant less favorably than other applicants. See 12 CFR 202.2(n).

household members, including those who are not liable for debts incurred on the account. For example, if an adult applicant lives with his or her parents, the applicant may understand “household income” to include the parents’ income even if the parents are not liable on the account. In the subprime mortgage lending market, the Board found that lenders relying on overstated incomes to make loans could not accurately assess consumers’ repayment ability.<sup>12</sup> The Board believes that TILA Section 150 was intended to prevent similar practices in the credit card market.<sup>13</sup>

*Consistency with Regulation B.* In the November 2010 Proposed Rule, the Board noted that there has been some confusion as to whether Regulation B requires a card issuer to consider spousal or other household income when considering a consumer’s ability to pay under § 226.51. Accordingly, the Board clarified that Regulation B does not compel a card issuer to consider spousal or other household income when considering an applicant’s ability to pay under either § 226.51(a) or (b). Furthermore, in the proposal, the Board clarified that card issuers would not violate Regulation B by virtue of complying with the requirements in § 226.51(a) or (b). Thus, to the extent that § 226.51 does not permit a card issuer to consider spousal or other household income, the Board’s November 2010 Proposed Rule stated that the card issuer does not violate Regulation B by excluding such income from consideration.

Nevertheless, some commenters raised concerns that this aspect of the proposed rule was inconsistent with Regulation B. In particular, these commenters argued that, because Regulation B limits card issuers’ ability to request information concerning an applicant’s spouse (such as the spouse’s income),<sup>14</sup> issuers must request “household income” on their

application forms in order to avoid violating Regulation B.

These commenters did not raise any new issues with respect to the relationship between § 226.51 and Regulation B. Thus, as in the proposal, the Board concludes that a card issuer does not violate Regulation B by virtue of complying with § 226.51. Several commenters requested that the Board delay finalizing this rule until such time as Regulation B could be amended to resolve any conflicts. However, because this rule does not conflict with Regulation B, the Board does not believe that such amendments are necessary.

*Effect on access to credit.* Comments from members of Congress, credit card issuers, retailers, trade associations, and individual consumers expressed concern that the proposed rule would unfairly restrict access to credit for consumers who do not work outside the home, particularly married women. These commenters stated that, in families where only one spouse is employed outside the home, the other spouse is often responsible for managing the family’s finances and making major purchases that require access to credit (such as opening a new credit card account in a store in order to finance the purchase of an appliance).<sup>15</sup> These commenters argued that, if a spouse who is not employed cannot rely on the employed spouse’s income when applying for credit, the application would likely be denied, despite the fact that the employed spouse’s income can be used to make the required payments on the account.<sup>16</sup> Commenters also raised similar concerns with respect to low-income families where both spouses work (particularly military families) because the spouses may need to pool their incomes in order to satisfy the ability-to-pay requirements of § 226.51.

The Board believes that TILA Section 150 was intended to strengthen credit card underwriting standards in order to protect consumers from incurring unaffordable levels of credit card debt. Consistent with this intent, the Board adopted § 226.51, which requires that, before opening a new credit card account or increasing the credit limit on an existing account, card issuers must evaluate whether a consumer has the income or assets necessary to make the

required payments on the credit card account and on any other debts. Thus, to the extent that credit card issuers previously extended credit to consumers who lacked sufficient income or assets to repay debts incurred on the account, § 226.51 now prohibits them from doing so. Similarly, to the extent that card issuers are currently extending credit based on the income of persons who are not liable on the account, the Board believes that it is consistent with the purposes of TILA Section 150 and § 226.51 to restrict this practice.

Furthermore, for the following reasons, the Board believes that married women who do not work outside the home and low-income families will continue to have access to credit. First, the final rule permits card issuers to ask for “income” or “salary” on their application forms and to use the information provided by applicants to satisfy the ability-to-pay requirement. As noted above, some card issuers currently request “income” or “salary” on their applications, while other issuers request “household income.” The Board is unaware of any evidence that card issuers who request “income” or “salary” extend less credit to married women who do not work outside the home or to low-income families than issuers that request “household income.”

Second, nothing in § 226.51 prohibits card issuers from considering the combined incomes of spouses or other household members who apply for credit jointly. Indeed, comment 51(a)(1)–6 currently states that, when two or more consumers open an account jointly, the card issuer may consider their collective ability to make the required payments. Thus, a consumer who does not have sufficient income to open a credit card account independently can open an account by applying jointly with a spouse who has sufficient income. The Board understands that a joint application could be inconvenient or impracticable in certain circumstances, such as when a consumer’s spouse is not available to apply in a retail setting. However, the Board does not believe that these concerns warrant permitting issuers to extend credit based on the income of persons who are not liable on the account.

Third, consumers without sufficient income to open a credit card account independently can obtain access to credit and build a credit history by becoming authorized users on the credit card account of a spouse, which is a common practice. In particular, the Board notes that a long-standing

<sup>12</sup> See 73 FR 44522, 44539–44551 (July 30, 2008) (discussing the Board’s concerns regarding overstated income in the context of higher-priced mortgage loans secured by the consumer’s principal dwelling).

<sup>13</sup> Some card issuers stated that credit card accounts opened based on household income do not have a higher rate of delinquency or loss than accounts opened based on individual income. However, they did not provide any data in support of this statement.

<sup>14</sup> See 12 CFR 202.5(c). However, Regulation B does permit a creditor to request information concerning an applicant’s spouse if, for example, the spouse will be permitted to use the account, the spouse will be contractually liable on the account, the applicant is relying on the spouse’s income as a basis for repayment of the credit requested, or the applicant resides in a community property state. See 12 CFR 202.5(c)(2).

<sup>15</sup> The Board notes, however, that commenters did not submit any data supporting this statement.

<sup>16</sup> Again, commenters generally did not submit data substantiating this contention. One credit card issuer estimated that, if the proposed rule were adopted, over 10% of applications that are currently approved would be denied. However, the issuer did not provide any information about how this estimate was made.

provision of Regulation B provides that, when a consumer is permitted to use a spouse's account, a creditor that furnishes credit information to the credit bureaus generally must reflect the participation of both spouses for that account.<sup>17</sup>

Finally, as noted above, the final rule permits a card issuer to consider the income of a consumer's spouse if a Federal or State statute or regulation grants the consumer an ownership interest in that income. For example, in community property states such as California and Texas, spouses are presumed to have joint ownership of property acquired during the marriage. Thus, if an applicant resides in a community property state, the applicant's income would generally include the income of the applicant's spouse for purposes of § 226.51(a). In these circumstances, a card issuer could—consistent with Regulation B—request that applicants who reside in community property states provide information regarding their spouses' incomes.<sup>18</sup>

#### Additional Revisions to Commentary

The Board has also made the following revisions to the commentary to § 226.51:

- Comments 51(a)(1)–1 and –2 have been amended to clarify that, consistent with the revisions to § 226.51(a), card issuers must consider the consumer's independent ability to make the required payments.
- Comments 51(a)(1)–4 and –6 and comment 51(b)(1)–2 have been amended to clarify that card issuers generally are not permitted to consider the income or assets of persons who are not liable for debts incurred on the account (such as authorized users).
- In order to improve clarity, the guidance in comment 51(a)(1)–4 has been reorganized into three subparagraphs.
- Consistent with the proposed amendments to §§ 226.9, 226.16, and 226.55 regarding fees that increase after a specified period of time, comment 51(a)(2)–3 has been amended to clarify that, when estimating the required minimum periodic payments for purposes of the safe harbor in § 226.51(a)(2)(ii), the issuer must use the fee that will apply after the specified period. This approach is consistent with the guidance regarding promotional rates in comment 51(a)(2)–2.
- The Board has adopted a new comment 51(b)(1)–2 to clarify that information regarding income and assets

that satisfies the requirements of § 226.51(a) also satisfies the requirements in § 226.51(b)(1) for consumers under the age of 21.

#### Section 226.52 Limitations on Fees

##### 52(a) Limitations Prior to Account Opening and During First Year After Account Opening

Section 226.52(a)(1) generally limits the total amount of fees that a consumer may be required to pay with respect to a credit card account under an open-end (not home-secured) consumer credit plan to 25 percent of the account's credit limit at account opening.<sup>19</sup> This limitation applies “during the first year after the account is opened.” However, the Board understands that some card issuers are requiring consumers to pay application, processing, or similar fees prior to account opening that, when combined with other fees charged after account opening, exceed the 25 percent threshold in § 226.52(a)(1). As discussed below, to the extent that § 226.52(a)(1) permits this practice, the Board is concerned that the regulation is inconsistent with the purposes of TILA (as amended by the Credit Card Act). Accordingly, pursuant to its authority under TILA Section 105(a) and Section 2 of the Credit Card Act, the Board proposed to amend § 226.52(a)(1) to apply to fees the consumer is required to pay prior to account opening.

The Credit Card Act amended TILA Section 127 by creating a new paragraph (n). *See* Credit Card Act § 105. Section 127(n)(1) provides that, “[i]f the terms of a credit card account under an open end consumer credit plan require the payment of any fees (other than any late fee, over-the-limit fee, or fee for a payment returned for insufficient funds) by the consumer in the first year during which the account is opened in an aggregate amount in excess of 25 percent of the total amount of credit authorized under the account when the account is opened, no payment of any fees (other than any late fee, over-the-limit fee, or fee for a payment returned for insufficient funds) may be made from the credit made available under the terms of the account.” 15 U.S.C. 1637(n)(1). Section 127(n)(2) further provides that Section 127(n) may not “be construed as authorizing any imposition or payment of advance fees otherwise prohibited by any provision of law.” 15 U.S.C. 1637(n)(2).

<sup>19</sup> Late payment fees, over-the-limit fees, and returned payment fees are exempt from this requirement, as are fees that the consumer is not required to pay with respect to the account. *See* § 226.52(a)(2).

As discussed in the February 2010 Final Rule, the Board believes that Section 127(n) was intended to prevent card issuers from requiring consumers to pay excessive fees in order to obtain a credit card account. *See* 75 FR 7724–7726. Many subprime credit card issuers require payment of substantial one-time fees when an account is opened (such as application fees, program fees, and annual fees). By linking the maximum amount of permissible fees to the amount of credit extended, Section 127(n)(1) and § 226.52(a)(1) establish a direct relationship between the costs and benefits associated with opening a credit card account. If, for example, a card issuer provides a consumer with a \$500 credit limit when the account is opened, the issuer is prohibited from requiring the consumer to pay more than \$125 in non-exempt fees at account opening. Furthermore, in order to ensure that the statutory relationship between fees and the account's credit limit is maintained for a reasonable period of time, Section 127(n)(1) and § 226.52(a)(1) apply for one year after an account is opened. Thus, a card issuer that charges non-exempt fees that equal 25 percent of the credit limit at account opening cannot require the consumer to pay any transaction fees, monthly maintenance fees, or other non-exempt fees for one year after account opening.

#### 52(a)(1) General Rule

##### Fees Charged Prior to Account Opening

The Board understands that, because § 226.52(a)(1) states that its limitations apply “during the first year after the account is opened,” there has been some uncertainty as to whether those limitations apply to fees that a consumer is required to pay prior to account opening. As noted above, some card issuers are currently requiring consumers to pay application or processing fees prior to account opening that, when combined with other fees charged to the account after account opening, exceed 25 percent of the account's initial credit limit. While this practice is consistent with the current language of § 226.52(a)(1), the Board believes that it is inconsistent with the intent of Section 127(n)(1) insofar as it alters the statutory relationship between the costs and benefits of opening a credit card account. Accordingly, in order to effectuate the purpose of Section 127(n)(1), the Board proposed to use its authority under TILA Section 105(a) and Section 2 of the Credit Card Act to amend § 226.52(a)(1) to apply the 25 percent limitation to fees the consumer is required to pay before

<sup>17</sup> *See* 12 CFR 202.10.

<sup>18</sup> *See* 12 CFR 202.5(c)(2)(iv), (d)(1).

account opening and during the first year after account opening.<sup>20</sup>

Consumer groups, a member of Congress, and a credit card issuer supported the proposed amendment on the grounds that it would prevent evasion and further the purposes of TILA Section 127(n). In contrast, the proposal was opposed by other industry commenters (including employees of a credit card issuer that focuses on the subprime market). These commenters argued that the proposed amendment was inconsistent with the plain language of the Credit Card Act insofar as it would apply the 25 percent limitation to fees charged prior to account opening. They also argued that the proposal would force subprime credit card issuers to reduce credit availability by limiting revenue derived from fees. However, for the reasons discussed above, the Board believes that the proposed rule is necessary to preserve the statutory relationship between the costs and benefits of opening a credit card account. Accordingly, in order to effectuate the purposes of TILA Section 127(n) and to prevent evasion, the Board is adopting this aspect of the proposal in the final rule. See TILA Section 105(a); Credit Card Act § 2.

#### Account Opening

The proposed rule noted that some confusion exists regarding when the one-year period in § 226.52(a)(1) begins and ends. In order to resolve any uncertainty as to when the 25 percent limitation in § 226.52(a)(1) ceases to apply, the Board proposed to amend § 226.52(a)(1) to provide that, for purposes of that paragraph, an account is considered open no earlier than the date on which the account may first be used by the consumer to engage in transactions. This approach is generally consistent with § 226.5(b)(1)(i), which provides that the account-opening disclosures required by § 226.6 must be provided before the first transaction is

made under the plan. Although § 226.5(b)(1)(iv) and (b)(1)(v) permit creditors to collect membership fees and application fees excludable from the finance charge under § 226.4(c)(1) before providing account-opening disclosures in certain circumstances, the Board is concerned that, because the ability to engage in transactions is a primary benefit of a credit card account, it would be inconsistent with the purpose of Section 127(n)(1) if the one-year period expired less than one year after the consumer could first use the account for transactions.

Although consumer groups supported this aspect of the proposal, industry commenters noted that, in certain circumstances, it would be operationally burdensome to track the precise date on which a particular account can first be used for transactions. These commenters conceded that the date an account is opened on a card issuer's system will coincide with the date the account can first be used for transactions when the account is opened at the point of sale in order to purchase merchandise. However, they stated that these dates will not coincide when a credit card is mailed to a consumer because the date the account can first be used for transactions will depend on how long it takes for the card to be delivered and how long the consumer waits after delivery to activate the card. Industry commenters recommended that, in order to establish a consistent standard, the first year after account opening under § 226.52(a) instead be measured from the date the account is opened on the card issuer's system.

The Board is concerned that deducting delivery time from the one-year period in TILA Section 127(n) would reduce protections for consumers. However, in order to reduce the operational burden on card issuers, the Board is adopting new comment 52(a)(1)-4 to provide additional guidance regarding how a card issuer determines the date on which the account may first be used by the consumer to engage in transactions. As an initial matter, this comment clarifies that a card issuer may consider an account open for purposes of § 226.52(a)(1) on the date the account is first used by the consumer for a transaction (such as when an account is opened at point of sale in order to make a purchase). In addition, to address circumstances in which a credit card and account-opening disclosures are mailed or delivered to consumers, the comment provides several alternative methods of determining the date on which the account may first be used for

transactions (even if the account is not actually used for a transaction on that date).

First, if a card issuer requires consumers to comply with reasonable activation procedures for preventing fraud or unauthorized use of a new account (such as requiring the consumer to provide information that verifies his or her identity over the telephone after receiving the card) before permitting the consumer to use the account for transactions, the card issuer may consider the account open on the date the consumer complies with those procedures, provided that the account may be used for transactions on that date.

Second, a card issuer may consider an account open for purposes of § 226.52(a)(1) on the date that is seven days after the card issuer mails or delivers to the consumer account-opening disclosures that are consistent with § 226.6, provided that the consumer may use the account for transactions after complying with any reasonable activation procedures for preventing fraud or unauthorized use. The Board has previously used seven days as a general measure of the amount of time required for credit card mailings to reach consumers.<sup>21</sup> Accordingly, the Board believes that a seven-day period reasonably estimates the amount of time required for account-opening disclosures to reach consumers by mail.

The following example illustrates the application of this guidance: Assume that a card issuer approves a consumer's application for a credit card account under an open-end (not home-secured) consumer credit plan and establishes the account on its internal systems on July 1 of year one. On July 5, the card issuer mails or delivers to the consumer account-opening disclosures that are consistent with § 226.6. If the consumer may use the account for transactions after complying with any reasonable procedures imposed by the card issuer for preventing fraud and unauthorized use, the card issuer may consider the account open on July 12 of year one for purposes of § 226.52(a)(1) regardless of when the consumer actually activates the account. Accordingly, § 226.52(a)(1) ceases to apply to the account on July 12 of year two.

While this guidance should alleviate much of the burden associated with tracking the date on which an account is opened for purposes of § 226.52(a),

<sup>20</sup> Although TILA Section 127(n)(2) refers to the "imposition or payment of advance fees," the Board does not interpret this reference as excluding "advance fees" from the application of Section 127(n)(1). On the contrary, Section 127(n)(2) specifically states that Section 127(n) cannot "be construed as authorizing any imposition or payment of advance fees otherwise prohibited by any provision of law," which the Board understands to mean that a fee that falls under the 25 percent threshold may nevertheless be subject to other legal restrictions. For example, comment 52(a)(3)-1 cites 16 CFR § 310.4(a)(4), which prohibits any telemarketer or seller from "[r]equesting or receiving payment of any fee or consideration in advance of obtaining a loan or other extension of credit when the seller or telemarketer has guaranteed or represented a high likelihood of success in obtaining or arranging a loan or other extension of credit for a person."

<sup>21</sup> See 74 FR 5498, 5511 (Jan. 29, 2009) (discussing rationale behind adoption of a 21-day period between mailing or delivery of periodic statements and the payment due date); see also Credit Card Act § 106(b) (adopting same 21-day period in revised TILA Section 163).



the Board recognizes that, in some cases, it may be difficult for card issuers to determine the specific date on which account-opening disclosures are mailed or delivered to a particular consumer. Accordingly, comment 52(a)(1)–4 further clarifies that, if a card issuer has reasonable procedures designed to ensure that account-opening disclosures that are consistent with § 226.6 are mailed or delivered to consumers no later than a certain number of days after the card issuer establishes the account on its system, the card issuer may add that number of days to the seven-day period for purposes of determining when the account was opened under § 226.52(a)(1). As discussed above, Congress and the Board have adopted a similar “reasonable procedures” standard for the provision of credit card periodic statements.<sup>22</sup> Accordingly, for purposes of § 226.52(a)(1), the Board believes that the same standard is appropriate for the provision of credit card account-opening disclosures.<sup>23</sup>

Using the facts in the example above, if the card issuer establishes the account on its internal systems on July 1 of year one and has adopted reasonable procedures designed to ensure that account-opening disclosures are mailed or delivered to consumers no later than three days after an account is established, the issuer may consider the account open on July 11 of year one for purposes of § 226.52(a)(1). Therefore, § 226.52(a)(1) ceases to apply to the account on July 11 of year two.

#### Additional Amendments

The Board understands that the references in § 226.52(a)(1) and comment 52(a)(1)–1 to the charging of fees to a credit card account have raised concerns as to whether § 226.52(a)(1) permits card issuers to require consumers to pay an unlimited amount of fees with respect to a credit card account so long as none of those fees are actually charged to the account. Although this language was based on the language of the Credit Card Act, the Board does not believe that Congress intended to permit card issuers to evade the 25 percent limitation by collecting fees from the consumer by other means. Indeed, as discussed in the February 2010 Final Rule, the Board believes that Congress intended the 25 percent

limitation to apply not only to fees charged to a credit card account but also to fees collected from other sources with respect to the account (such as fees that are charged to a consumer’s deposit account). See 75 FR 7724–7726.

Accordingly, in order to resolve any ambiguity, the Board proposed to use its authority under TILA Section 105(a) and Section 2 of the Credit Card Act to simplify § 226.52(a)(1) by removing this language. The Board also proposed to amend the commentary to § 226.52(a)(1) for consistency with the proposed revisions discussed above and to make certain non-substantive clarifications and corrections. Consumer groups and most industry commenters supported this aspect of the proposal. Although some industry commenters argued that the Board should strictly apply the statutory language, the Board believes that doing so would undermine the purpose of the Credit Card Act. Accordingly, the Board is adopting this aspect of the proposal.

#### 52(a)(2) Fees Not Subject to Limitations

The Board understands that there has been some uncertainty as to whether minimum interest charges are subject to § 226.52(a)(1). The Board has previously concluded elsewhere in Regulation Z that such charges should be treated as fees. See comment 7(b)(6)–4.

Accordingly, for consistency, the Board proposed to amend comment 52(a)(2)–1 to clarify that, while § 226.52(a)(1) does not apply to charges attributable to periodic interest rates, it applies to charges imposed as a substitute for interest when the interest charge would not otherwise exceed a minimum threshold. In addition, the Board proposed to clarify that § 226.52(a)(1) applies to other fixed finance charges.

Consumer group commenters supported the proposed revisions. However, one industry commenter requested that, because § 226.52(a)(1) does not apply to accrued interest, only the difference between the accrued interest and the minimum interest charge be considered a fee. For example, the commenter suggested that, if the interest accrued during a billing cycle is 40 cents and the minimum interest charge is \$1.00, only 60 cents should be considered a fee under § 226.52(a)(1). The Board declines to adopt this approach because, in these circumstances, the card issuer is not imposing accrued interest. Instead, the card issuer has chosen to impose a higher, pre-determined charge in lieu of interest. Furthermore, subdividing the minimum interest charge into accrued interest and fee portions would be inconsistent with the disclosure of

minimum interest charges in the tables provided with applications and solicitations and at account opening. Sections 226.5a and 226.6 require that the minimum interest charge be disclosed in the tables with headings, content, and format substantially similar to the model forms in Appendix G–10 and G–17, which disclose the minimum interest charge as a single, specific amount. See §§ 226.5a(a)(2), (b)(3); 226.6(b)(1), (b)(2)(iii). Furthermore, as noted above, card issuers are required to treat the entire minimum interest charge as a fee for purposes of the periodic statement disclosures required by § 226.7(b)(6). The Board is concerned that permitting issuers to subdivide the minimum interest charge into interest and fees in these disclosures would be confusing to consumers. Similarly, if issuers were permitted to subdivide the minimum interest charge for purposes of § 226.52(a) but not for purposes of the disclosures in § 226.7, consumers would not be able to, for example, use the fee disclosures on their periodic statements to determine whether the total amount of fees imposed are consistent with the 25 percent limitation. Accordingly, the revisions to comment 52(a)(2)–1 are adopted as proposed.

#### 52(a)(3) Rule of Construction

The Board proposed to correct a typographical error in § 226.52(a)(3) by replacing the words “This paragraph (a)” with “Paragraph (a) of this section.” The Board did not receive any significant comment on this correction, which is adopted as proposed.

#### 52(b) Limitations on Penalty Fees

Section 226.52(b)(1) prohibits card issuers from imposing fees for violating the terms or other requirements of an open-end (not home-secured) consumer credit plan unless the dollar amount of the fee either represents a reasonable proportion of the total costs incurred by the issuer as a result of the type of violation or complies with the applicable safe harbor amount. Furthermore, under § 226.52(b)(2), the dollar amount of the fee cannot exceed the dollar amount associated with the violation and a card issuer cannot impose more than one fee based on a single event or transaction. In order to facilitate compliance, the Board proposed to amend § 226.52(b) and the accompanying commentary to provide additional guidance and illustrative examples. As discussed below, those amendments are generally adopted as proposed.

<sup>22</sup> See Credit Card Act § 106(b); § 226.5(b)(2).

<sup>23</sup> The Board notes that the account-opening definition in § 226.52(a)(1) and the guidance in the accompanying commentary should not be construed as altering the timing requirements for the provision of account-opening disclosures under § 226.5(b)(1)(i), which—as discussed above—require creditors to provide account-opening disclosures that are consistent with § 226.6 before the first transaction is made on the account.

*52(b)(1)(ii) Safe Harbors*

The safe harbors in § 226.52(b)(1)(ii)(A)–(B) provide that a card issuer generally may impose a fee of \$25 for an initial violation and a fee of \$35 for any additional violation of the same type during the next six billing cycles. As discussed below, the Board proposed to make several significant amendments to § 226.52(b)(1)(ii) and its commentary. In addition, the Board proposed several non-substantive clarifying or organizational amendments.<sup>24</sup> Except as noted below, these amendments were generally supported by commenters and are adopted as proposed.

*Multiple Violations During a Billing Cycle*

The safe harbors in § 226.52(b)(1)(ii) address circumstances in which a violation is repeated in one of the six billing cycles following the billing cycle during which the initial violation occurred. However, the safe harbors do not expressly address circumstances in which a repeated violation occurs in the *same* billing cycle as the initial violation. The Board proposed to correct this oversight by amending § 226.52(b)(1)(ii)(B) to state that a card issuer may impose a \$35 fee for a subsequent violation of the same type that occurs *during the same billing cycle* or during the next six billing cycles.

There are relatively few circumstances in which a card issuer may impose multiple fees for multiple violations of the same type during a billing cycle. Section 226.56(j)(1) prohibits card issuers from imposing more than one over-the-limit fee per billing cycle. Furthermore, § 226.52(b)(2)(ii) prohibits the imposition of more than one penalty fee based on a single event or transaction, which prevents card issuers from imposing more than one late payment fee during a billing cycle. In addition, as discussed in comment 52(b)(2)(i)–1, a card issuer may not impose multiple returned payment fees by submitting the same check for payment multiple times. Although consumer group commenters suggested that multiple returned payment fees could be prohibited in these circumstances, the Board believes that a card issuer should be permitted to impose two returned payment fees during a billing cycle if a consumer makes two separate payments that are returned during that billing cycle.

<sup>24</sup> In particular, the Board proposed to move the language in § 226.52(b)(1)(ii)(A) and (B) regarding adjustments to the safe harbor amounts based on changes in the Consumer Price Index to a new § 226.52(b)(1)(ii)(D).

Furthermore, in these circumstances, the Board believes that it is consistent with the purpose of the safe harbors in § 226.52(b)(1)(ii)(A)–(B) to permit the card issuer to impose a \$35 fee for the second returned payment. Accordingly, the Board has revised § 226.52(b)(1)(ii)(B) to clarify that this is permitted. The Board has also amended comment 52(b)(1)(ii)–1 for consistency with the revisions to § 226.52(b)(1)(ii)(A)–(B) and provided an illustrative example in comment 52(b)(2)(ii)–1.

*Multiple Over-the-Limit Fees*

The Board has adopted the proposed revisions to comment 52(b)(1)(ii)–1.ii in order to provide additional guidance regarding the relationship between the safe harbors in § 226.52(b)(1)(ii), the prohibition on imposing multiple fees based on a single event or transaction in § 226.52(b)(2)(ii), and the limitations on fees for exceeding the credit limit in § 226.56(j)(1). Consistent with the Credit Card Act, § 226.56(j)(1) permits card issuers to impose multiple over-the-limit fees based on a single over-the-limit transaction when the consumer does not make payments sufficient to bring the balance under the credit limit by the next payment due date (although no more than three fees may be imposed with respect to any single transaction). *See* Credit Card Act § 102(a); TILA Section 127(k); *see also* 75 FR 7751–7752. Consumer group commenters argued that, notwithstanding this statutory language, the Board should use its authority under TILA Section 105(a) and Section 2 of the Credit Card Act to prohibit the imposition of multiple over-the-limit fees in these circumstances. However, because it appears that Congress intended to permit this practice, the Board does not believe that it would be appropriate to interpret § 226.52(b) as prohibiting such fees. Accordingly, the Board has provided additional guidance in comment 52(b)(1)(ii)–1.ii clarifying that, to the extent permitted by § 226.56(j)(1), § 226.52(b)(2)(ii) does not prohibit a card issuer from imposing fees for exceeding the credit limit in consecutive billing cycles based on a single over-the-limit transaction. The Board has further clarified that, in these circumstances, the second and third over-the-limit fees permitted by § 226.56(j)(1) may be \$35, consistent with the safe harbor for repeated violations in § 226.52(b)(1)(ii)(B). A cross-reference has been inserted to comment 52(b)(2)(ii)–1, where similar guidance and an illustrative example are also be provided.

*Waiver of Penalty Fees*

As discussed in the June 2010 Final Rule, the safe harbor in § 226.52(b)(1)(ii) was designed to permit card issuers to increase the penalty for repeated violations of the same type in order to, among other things, deter consumers from engaging in future violations. *See* 75 FR 37531–37534, 37540–37543. In order to accomplish this purpose, the Board proposed to revise § 226.52(b)(1)(ii)(B) to clarify that, under the safe harbor, the higher \$35 fee could only be imposed if the card issuer had previously imposed the lower \$25 fee for a violation of the same type. The Board is adopting these revisions as proposed.

However, industry commenters raised concerns about when a fee would be considered “imposed” under the proposed amendment. In particular, these commenters noted that card issuers often voluntarily choose to waive the penalty fee for an initial violation but would lose the incentive to do so if they could not impose the higher fee for subsequent violations. Because the waiver of penalty fees is beneficial to consumers, the Board has clarified in comment 52(b)(1)(ii)–1.i that a fee has been imposed for purposes of § 226.52(b)(1)(ii) even if the card issuer waives or rebates all or part of the fee. Thus, under the safe harbor, a card issuer may waive the \$25 fee for an initial violation and still impose a \$35 fee for a repeated violation of the same type during the same billing cycle or the next six billing cycles.

The Board notes that, in order to demonstrate compliance with the safe harbors in § 226.52(b)(1)(ii), a card issuer must be able to establish that the \$35 fee was not imposed for the first violation of a particular type during the relevant billing cycles. One method that card issuers may use to accomplish this is to disclose the imposition of the initial \$25 fee and the waiver of that fee on the consumer’s periodic statements.

*52(b)(2)(i) Fees That Exceed Dollar Amount Associated With Violation*

Section 226.52(b)(2)(i)(B)(2) prohibits a card issuer from imposing a fee based on account inactivity (including the consumer’s failure to use the account for a particular number or dollar amount of transactions or a particular type of transaction). As an illustrative example, comment 52(b)(2)(i)–5 states that § 226.52(b)(2)(i)(B)(2) prohibits a card issuer from imposing a \$50 fee when a consumer fails to use the account for \$2,000 in purchases over the course of a year. Furthermore, to prevent circumvention, the comment clarifies

that § 226.52(b)(2)(i)(B)(2) prohibits a card issuer from imposing a \$50 annual fee on all accounts but waiving the fee if the consumer uses the account for \$2,000 in purchases over the course of a year.

The Board understands that comment 52(b)(2)(i)–5 has created some confusion as to whether card issuers are prohibited from considering account activity as a factor when, for example, responding to an individual consumer's request that an annual fee be waived. This was not the Board's intent. Instead, the example in comment 52(b)(2)(i)–5 was intended to clarify that card issuers are prohibited from achieving indirectly through a systematic waiver of annual fees a result that is directly prohibited by § 226.52(b)(2)(i)(B)(2): establishing a program under which only consumers who do not use an account for at least \$2,000 in purchases over the course of a year are charged an additional \$50. Accordingly, the Board proposed to amend comment 52(b)(2)(i)–5 to clarify that, if a card issuer does not promote the waiver or rebate of the annual fee for purposes of § 226.55(e), § 226.52(b)(2)(i)(B)(2) does not prohibit the issuer from considering account activity when waiving or rebating annual fees on individual accounts (such as in response to a consumer's request).<sup>25</sup>

Industry commenters generally supported the proposed revisions. However, consumer group commenters requested that waivers based on account activity only be permitted when requested by the consumer, even if the possibility of a waiver is not promoted to consumers. As discussed in greater detail below with respect to § 226.55(e), the Board believes that a card issuer waiver program or policy that is not promoted does not raise the same circumvention concerns as a promoted program or policy. Accordingly, the amendments to comment 52(b)(2)(i)–5 are adopted as proposed, with non-substantive revisions.

#### *52(b)(2)(ii) Multiple Fees Based on a Single Event or Transaction*

The Board proposed to amend comment 52(b)(2)(ii)–1 to provide additional examples further illustrating the application of § 226.52(b)(2)(ii). Among other things, these examples clarify that—if the required minimum periodic payment is not made during a billing cycle and a late payment fee is imposed—the card issuer may include the unpaid amount in the required

minimum periodic payment due during the next billing cycle and impose a second late payment fee under § 226.52(b)(2)(ii) if the consumer fails to make the second minimum payment. However, the examples also clarify that—if a consumer makes a required minimum periodic payment by the applicable due date—the card issuer may not impose a late payment fee based on the consumer's failure to also pay past due amounts that the card issuer chose not to include in that required minimum periodic payment.

The Board understands that, for loss mitigation and other purposes, some card issuers do not include past due amounts in the required minimum periodic payment. The Board acknowledges that this practice is beneficial to consumers to the extent that it prevents some delinquent consumers from becoming even more delinquent. For example, if a card issuer does not include past due amounts in the required minimum periodic payment, a consumer could remain one payment past due indefinitely without ever becoming more than 60 days delinquent and thereby avoid the application of a penalty rate to existing balances pursuant to § 226.55(b)(4). However, a consumer who makes the required minimum periodic payment reflected on the periodic statement by the due date should not be charged a late payment fee. It is inconsistent with the purpose of § 226.52(b)(2)(ii) for a consumer to be charged more than one late payment fee based on the failure to make a single required minimum periodic payment.

Consumer group and one industry commenter supported this aspect of the proposal. In contrast, two industry commenters opposed it on the grounds that the card issuer cannot include the past due amount in the next minimum payment when a payment is returned after the periodic statement has been mailed or delivered to the consumer. However, it is unclear how often this scenario occurs. Furthermore, although the card issuer cannot impose a late payment fee if the consumer pays the amount reflected on the statement by the due date, the card issuer is permitted to impose a fee based on the returned payment. Accordingly, for the reasons discussed above, the revisions to comment 52(b)(2)(ii)–1 are adopted as proposed.

#### *Section 226.53 Allocation of Payments 53(b) Special Rules*

Section 226.53(a) implements TILA Section 164(b)(1), which requires that card issuers generally allocate amounts

paid by the consumer in excess of the required minimum periodic payment first to the balance with the highest annual percentage rate and then to other balances in descending order based on the applicable rate. However, TILA Section 164(b)(2) and § 226.53(b)(1) set forth a special rule for accounts with balances subject to a deferred interest or similar program. In these circumstances, a card issuer is required to allocate excess payments first to the balance subject to the program during the two billing cycles immediately preceding expiration of the program. In addition, in the February 2010 Final Rule, the Board used its authority under TILA Section 105(a) and Section 2 of the Credit Card Act to adopt § 226.53(b)(2), which permits card issuers to allocate excess payments among the balances in the manner requested by the consumer when a balance on the account is subject to a deferred interest or similar program. *See* 75 FR 7728–7729.

The Board understands that there is some concern regarding the appropriate allocation of payments when an account has multiple balances, one of which is secured. For example, some private label credit cards permit consumers to purchase equipment that is subject to a security interest (such as a motorcycle, snowmachine, or riding lawnmower) as well as related items that are not (such as helmets and other accessories). If the rate that applies to an unsecured balance is higher than the rate that applies to the secured balance, § 226.53(a) currently requires the card issuer to apply excess payments first to the unsecured balance. While this allocation method is generally beneficial to consumers insofar as it minimizes interest charges, it could also make it difficult for a consumer to pay off the secured balance in order to obtain a release of the security interest. For example, if a consumer wishes to pay off the secured balance in order to sell, trade in, or otherwise dispose of the property in which the card issuer has a security interest, § 226.53(a) requires the consumer to pay off not only the secured balance but also any other balances to which a higher rate applies.

The Board believes that, in this narrow set of circumstances, it is beneficial to consumers to provide greater flexibility regarding the allocation of excess payments. Accordingly, pursuant to its authority under TILA Section 105(a) and Section 2 of the Credit Card Act, the Board proposed to redesignate the special rules for accounts with deferred interest or similar balances as § 226.53(b)(1)(i) and (b)(1)(ii) and to adopt a new special rule for accounts with secured balances

<sup>25</sup> The promotion of waivers and rebates is discussed in detail below with respect to § 226.55(e).

in § 226.53(b)(2). Specifically, revised § 226.53(b)(2) provided that, when a balance on a credit card account under an open-end (not home-secured) consumer credit plan is secured, the card issuer may, at its option, allocate any amount paid by the consumer in excess of the required minimum periodic payment to that balance if requested by the consumer, even if a higher rate applies to another balance.

The Board also proposed to revise the commentary to § 226.53 consistent with the proposed revisions to § 226.53(b). In particular, the Board proposed to clarify that the guidance in comment 53(b)–3 on what constitutes a consumer request when an account has a deferred interest or similar balance also applies when an account has a secured balance.

Industry and consumer group commenters generally supported the proposal, although consumer groups expressed concern that a special payment allocation rule for secured credit card balances could encourage the use of open-end credit accounts for transactions that are more appropriately treated as closed-end credit.

Accordingly, the Board is adopting the proposed revisions to § 226.53 and its commentary pursuant to its authority under TILA Section 105(a) and Section 2 of the Credit Card Act, while specifically noting that, in order to qualify as open-end credit under Regulation Z, an account must meet the definition of open-end credit in § 226.2(a)(20) and its commentary.

#### *Section 226.55 Limitations on Increasing Annual Percentage Rates, Fees, and Charges*

##### *55(a) General Rule*

Section 226.55 implements the restrictions on increases in annual percentage rates and certain fees and charges in TILA Sections 171 and 172. Section 226.55(a) prohibits card issuers from increasing an annual percentage rate or any fee or charge required to be disclosed under § 226.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii) unless specifically permitted by one of the exceptions in § 226.55(b). The Board understands that there has been some confusion as to whether an increase in a rate, fee, or charge is subject to this prohibition when the consumer was previously notified of the circumstances giving rise to the increase. Accordingly, in order to remove any ambiguity, the Board proposed to amend comment 55(a)–1 to clarify that—except as specifically provided in § 226.55(b)—the prohibition in § 226.55(a) applies even if the circumstances under which an increase will occur are disclosed in

advance. Commenters generally supported this revision, which is adopted as proposed.

##### *55(b) Exceptions*

Section 226.55(b) contains exceptions to the general rule in § 226.55(a). As a general matter, these exceptions are not mutually exclusive, and a card issuer may increase a rate, fee, or charge pursuant to one exception even if that increase would not be permitted under a different exception. Comment 55(b)–1 provides illustrative examples of the interaction between the different exceptions in § 226.55(b).

The Board proposed to amend comment 55(b)–1 to provide additional guidance regarding the interaction between the exception in § 226.55(b)(4) for accounts that become more than 60 days delinquent, the exception in § 226.55(b)(5) for accounts subject to a workout or temporary hardship arrangement, and the exception in § 226.55(b)(6) for accounts subject to the SCRA or a similar Federal or State statute or regulation. Section 226.55(b)(4)(ii) implements the “cure” provision in TILA Section 171(b)(4)(B), which allows a consumer whose rate has been increased as a result of a delinquency of more than 60 days to “terminate” the increase (in other words, reduce the rate to the pre-existing value) by making the next six required minimum payments by the due date. For example, if the rate on a \$1,000 balance was increased from 12% to 30% on January 31 based on a delinquency of more than 60 days, § 226.55(b)(4)(ii) requires the card issuer to reduce the rate on any remaining portion of the \$1,000 balance to 12% if the consumer makes the required minimum periodic payments for February, March, April, May, June, and July by the relevant due date.

However, the Board understands that, in certain circumstances, a consumer may enter into a workout or temporary hardship arrangement or enter military service after a rate has been increased based on a delinquency of more than 60 days but before the consumer has made the six timely payments necessary to obtain a reduction under § 226.55(b)(4)(ii). Section 226.55(b)(5) implements TILA Section 171(b)(3), which provides that a card issuer may increase the rate on an existing balance when a workout or temporary hardship arrangement is completed or fails, so long as the increased rate does not exceed the rate that applied prior to the arrangement. For example, if a card issuer reduced a consumer’s rate on a \$1,000 balance from 30% to 15% as part of a workout or temporary hardship

arrangement, § 226.55(b)(5) would permit the card issuer to increase the rate on any remaining portion of the \$2,000 balance to 30% upon completion or failure of the arrangement.

Similarly, when the rate that applies to a balance is reduced pursuant to the SCRA because the consumer enters military service, § 226.55(b)(6) permits the card issuer to reinstate the pre-existing rate for that balance once the consumer leaves military service. For example, if a card issuer reduced a consumer’s rate on a \$1,000 balance from 30% to 6% pursuant to the SCRA, § 226.55(b)(6) would permit the card issuer to increase the rate on any remaining portion of the \$1,000 balance to 30% once the consumer leaves military service and the SCRA no longer applies.

Accordingly, when a consumer obtains a § 226.55(b)(4)(ii) reduction during a workout or temporary hardship arrangement or while in military service, it is unclear whether § 226.55(b)(5) or (b)(6) would permit the card issuer to negate that reduction by returning existing balances to the rate that applied prior to commencement of the arrangement or military service. Because § 226.55(b)(4)(ii) implements a specific statutory requirement that a rate increase based on a delinquency of more than 60 days be terminated if the consumer makes the next six required minimum payments on time, the Board believes it would be inconsistent with the intent of that requirement to interpret the exceptions in § 226.55(b)(5) and (b)(6) as overriding the reduction in rate. Thus, the Board proposed revisions to comment 55(b)–1 clarifying that, if § 226.55(b)(4)(ii) requires a card issuer to decrease the rate, fee, or charge that applies to a balance while the account is subject to a workout or temporary hardship arrangement or subject to the SCRA or a similar Federal or State statute or regulation, the card issuer may not impose a higher rate, fee, or charge on that balance pursuant to § 226.55(b)(5) or (b)(6).

The Board also proposed the following illustrative example: Assume that, on January 1, the annual percentage rate that applies to a \$1,000 balance is increased from 12% to 30% pursuant to § 226.55(b)(4). On February 1, the rate on that balance is decreased from 30% to 15% consistent with § 226.55(b)(5) as a part of a workout or temporary hardship arrangement. On July 1, § 226.55(b)(4)(ii) requires the card issuer to reduce the rate that applies to any remaining portion of the \$1,000 balance from 15% to 12%. If the consumer subsequently completes or fails to comply with the terms of the

workout or temporary hardship arrangement, the card issuer may not increase the 12% rate on any remaining portion of the \$1,000 balance pursuant to § 226.55(b)(5).

Consumer group commenters supported this aspect of the proposal, while one industry commenter argued that the proposed amendments would make card issuers less inclined to provide workout or temporary hardship arrangements. Because workout and temporary hardship arrangements can provide important benefits to card issuers as well as consumers by reducing the likelihood that a delinquent account will become a loss, the Board does not believe that the proposed revisions to comment 55(b)–1 will result in a significant reduction in the availability of such arrangements. Accordingly, for the reasons discussed above, the Board is adopting this aspect of the proposal.

#### *55(b)(1) Temporary Rate, Fee, or Charge Exception*

Section 226.55(b)(1) implements TILA Section 171(b)(1), which permits a card issuer to increase a temporary or promotional rate upon expiration of a period of at least six months, provided that the card issuer discloses in advance the length of the period and the rate that will apply after expiration. However, neither § 226.55(b)(1) nor TILA Section 171(b)(1) addresses circumstances in which an annual fee or other fee or charge subject to § 226.55 increases after a specified period of time. As discussed above, the Board declined to adopt a specific exception for temporary or promotional fee programs in the February 2010 Final Rule because the Credit Card Act did not contain such an exception and because an exception did not appear to be necessary. *See* 75 FR 7734 n. 48; *see also id.* 7699, 7706–7707. Indeed, the Board noted that nothing in the February 2010 Final Rule prohibited a creditor from providing notice of an increase in a fee at the same time it temporarily reduces the fee, provided that information regarding the reduction is not interspersed with the content required to be disclosed pursuant to § 226.9(c)(2)(iv). *See* 75 FR 7699; *see also* comment 5a(b)(2)–4.

Nevertheless, as discussed above with respect to § 226.9(c)(2)(v)(B), the Board believes that, upon further review, it is appropriate to use its authority under TILA Section 105(a) and Section 2 of the Credit Card Act to specifically address temporary or promotional programs for fees or charges subject to § 226.55 in order to encourage issuers to disclose and structure such programs in a consistent manner that enables

consumers to understand the associated costs. Accordingly, the Board proposed to amend § 226.55(b)(1) to apply to temporary or promotional programs for fees and charges required to be disclosed under § 226.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii). Thus, § 226.55(b)(1), as amended, would permit a card issuer to, for example, increase an annual fee after a specified period of time if the card issuer provides the consumer in advance with a clear and conspicuous written disclosure of the length of the period and the fee or charge that will apply after expiration of the period.

In addition, the Board proposed to amend comments 55(b)(1)–2–4 for consistency with the proposed revisions to § 226.55(b)(1), to provide additional illustrative examples, and to make other non-substantive clarifications. The Board also proposed a new comment 55(b)(1)–5 to clarify that, although the limitations in § 226.55(b)(1)(ii) on applying an increased rate to certain types of transactions would also apply to increased fees or charges subject to § 226.55, card issuers generally are not prohibited from increasing a fee or charge that applies to the account as whole (to the extent consistent with the notice requirements in §§ 226.9 and 226.55(b)(3)). Finally, the Board proposed to add an additional example to comment 55(b)–3 to clarify the application of § 226.55 when the specified time periods for temporary rates overlap.

Commenters generally supported the proposed revisions, although several industry commenters argued that promotional fee reductions should be exempted from the requirement in § 226.55(b)(1) that promotional reductions last at least six months. In support of this argument, these commenters noted that § 226.55(b)(1)'s six-month requirement implements TILA Section 172(b), which applies only to promotional reductions in rates. *See* Credit Card Act § 101(d). However, as discussed above and in the February 2010 Final Rule, the Credit Card Act does not contain *any* exception for promotional fee reductions. Thus, in using its authority under TILA Section 105(a) and Section 2 of the Credit Card Act to establish such an exception, the Board believes that it is important to ensure that consumers receive the same protections with respect to promotional fee reductions that they receive with respect to promotional rate reductions. Accordingly, the Board adopts the revisions to § 226.55(b)(1) and its commentary as proposed.

#### *55(b)(3) Advance Notice Exception*

Section 226.55(b)(3) provides that a card issuer may generally increase the rate, fee, or charge that will apply to new transactions after complying with the notice requirements in § 226.9. However, § 226.55(b)(3)(iii) further provides that a card issuer cannot use this exception to increase a rate, fee, or charge during the first year after account opening.

The Board understands that there has been some confusion regarding the circumstances under which an increased fee or charge applies to an existing balance (as opposed to the account as a whole) and therefore does not qualify for the exception in § 226.55(b)(3). In particular, there has been uncertainty as to whether an increased fee or charge can be applied to a closed account or an account on which transaction privileges have been suspended. Because an account cannot be used for new transactions in these circumstances, an increased fee or charge subject to § 226.55 could only be applied to the account's existing balance. In addition, §§ 226.52(b)(2)(i)(B)(3) and 226.55(d)(1) generally prohibit a card issuer from applying a new or increased fee or charge to a closed account. Accordingly, to provide greater clarity, the Board proposed to amend § 226.55(b)(3)(iii) to state that § 226.55(b)(3) does not permit a card issuer to increase a rate, fee, or charge subject to § 226.55 while an account is closed or while the card issuer does not permit the consumer to use the account for new transactions.

Consumer group commenters supported the proposed revisions, but industry commenters raised concerns regarding the burden of determining whether an account is closed or transaction privileges are suspended before increasing a rate, fee, or charge. These commenters noted that transaction privileges on an account may be temporarily suspended because the consumer has exceeded his or her credit limit, because the account is more than 60 days' delinquent, because the account is subject to a workout or temporary hardship agreement, or because the issuer is investigating potential fraudulent use of the account. They also noted that an account may be open and transactions may be permitted when the card issuer provides 45 days' advance notice of the increase consistent with § 226.9, but the account may be closed or transaction privileges may be suspended by the time the card issuer is permitted to implement the increase.

Industry commenters argued that issuers should be permitted to increase rates, fees, and charges on closed accounts and accounts where transaction privileges have been suspended, noting that § 226.55 would still prevent issuers from applying increased rates to existing balances and that consumers would still have the right to reject an increased fee or charge under § 226.9(h). However, when an account cannot be used for new transactions, the Board believes that it would be inconsistent with the purpose of the Credit Card Act to permit increases that can only be applied to the account's existing balance. Furthermore, with respect to increases in fees and charges, the Board is concerned that consumers will be less likely to notice changes to a closed account and therefore less likely to exercise their right to reject. Accordingly, the Board is adopting the proposed amendment to § 226.55(b)(3)(iii) clarifying that issuers are prohibited from increasing rates and fees and charges subject to § 226.55 when an account is closed or while the card issuer does not permit the consumer to use the account for new transactions.

However, the Board recognizes that certain suspensions of transaction privileges (particularly those related to potential fraudulent use of the account) may last for relatively short periods of time. In these circumstances, the Board does not believe that, as a general matter, it is necessary for the card issuer to provide an additional § 226.9 notice simply because transaction privileges may have been suspended on the date the original notice was sent, the date the increase was scheduled to go into effect, or some date in between. Accordingly, the Board has adopted a new comment 55(b)(3)–6, which clarifies that, if § 226.9 permits a card issuer to apply an increased rate, fee, or charge on a particular date and the account is closed on that date or transaction privileges are suspended on that date, the card issuer may delay application of the increased rate, fee, or charge until the first day of the following billing cycle without relinquishing the ability to apply that rate, fee, or charge. This guidance is consistent with the guidance provided by the Board in comment 55(b)–2.iii for mid-cycle increases. However, comment 55(b)(3)–6 would further clarify that, if the account is closed or the card issuer does not permit the consumer to use the account for new transactions on the first day of the following billing cycle, then the card issuer must provide a new notice of the increased rate, fee, or charge consistent with § 226.9.

Finally, consistent with the amendments to § 226.52(a)(1), the Board has clarified that, for purposes of § 226.55(b)(3)(iii), an account is considered open no earlier than the date on which the account may first be used by the consumer to engage in transactions. In addition, the Board has adopted a new comment 55(b)(3)–7, which clarifies that an account is considered open for purposes of § 226.55(b)(3)(iii) on any date that the card issuer may consider the account open for purposes of § 226.52(a)(1).

#### *55(b)(6) Servicemembers Civil Relief Act Exception*

Section 226.55(b)(6) provides that, when a card issuer is required by the SCRA to reduce the annual percentage rate for an account to 6% when the consumer enters military service, the card issuer may increase the rate once the SCRA no longer applies, subject to certain limitations. However, § 226.55(b)(6) does not address circumstances in which the SCRA's broad definition of "interest" requires the card issuer to reduce not only the annual percentage rate but also fees or charges while the consumer is in military service. *See* 50 U.S.C. app. 527(d)(1) (defining "interest" as including "service charges, renewal charges, fees, or any other charges (except bona fide insurance) with respect to an obligation or liability"). Accordingly, the Board proposed to amend § 226.55(b)(6) and the relevant commentary to clarify that, to the extent the SCRA also requires the card issuer to reduce a fee or charge required to be disclosed under § 226.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii), the card issuer is generally permitted to increase that fee or charge once the SCRA no longer applies.

The Board also understands that many states have enacted statutes that—like the SCRA—require creditors to reduce rates, fees, and charges while a consumer is in military service. *See, e.g.,* La. Rev. Stat. Ann. § 29:312; N.Y. Mil. Law art. 13 § 323–a; R.I. Gen. Laws § 30–7–10; Utah Code Ann. § 39–7–111. Accordingly, in order to clarify that § 226.55 does not prevent a card issuer from increasing a rate, fee, or charge to the pre-existing amount once a state law requirement no longer applies, the Board proposed to amend the exception in § 226.55(b)(6) to apply to decreases imposed pursuant to the SCRA or "a similar federal or state statute or regulation." The Board also proposed corresponding amendments to the relevant commentary.

Finally, the Board noted in the proposal that, while the SCRA and some

similar state statutes only require creditors to reduce the rates, fees, and charges that apply to obligations incurred *before* the consumer enters military service, some card issuers voluntarily apply the reduced rate, fee, or charge to transactions that occur *after* the consumer has entered military service. Accordingly, the Board proposed to adopt a new comment 55(b)(6)–2 clarifying that, if a card issuer decreases all rates, fees, and charges to amounts that are consistent with the SCRA or a similar Federal or State statute or regulation (including rates, fees, and charges that apply to new transactions), the card issuer may increase those rates, fees, and charges consistent with § 226.55(b)(6). The Board also proposed to revise the example in current comment 55(b)(6)–2 to illustrate the application of this guidance and redesignate that example as comment 55(b)(6)–3.

Commenters generally supported the proposed revisions. However, consumer group commenters expressed concern that the guidance in new comment 55(b)(6)–2 could be construed to permit increases in rates, fee, or charges that are unrelated to a consumer leaving military service. Because this was not the Board's intent, the proposed comment has been revised to clarify that the guidance applies only when other rates, fees, or charges have been reduced pursuant to the SCRA or a similar Federal or State statute or regulation. Otherwise, the revisions to § 226.55(b)(6) and its commentary are adopted as proposed.

#### *55(c) Treatment of Protected Balances*

Section 226.55(c) addresses the treatment of "protected balances," which are the existing balances to which a card issuer may not apply an increased rate, fee, or charge under § 226.55. Comment 55(c)(1)–3 provides guidance regarding the application of increased fees or charges to protected balances. In particular, this comment clarifies that, while a card issuer is prohibited from applying an increased fee or charge that is subject to § 226.55 to a protected balance, a card issuer is not prohibited from increasing a fee or charge that applies to the account as a whole or to balances other than the protected balance. The Board has revised this comment to clarify that a card issuer's ability to increase a fee or charge is also subject to the limitations in § 226.55(b)(3)(iii) on increasing fees during the first year after account opening, while an account is closed, or while transaction privileges are suspended.

The Board also proposed to add a new comment 55(c)(1)–4 clarifying that nothing in § 226.55 prohibits a card issuer from changing the balance computation method that applies to new transactions as well as protected balances. The Board did not receive any significant comment on this guidance, which is adopted as proposed. However, the Board notes that, before changing the balance computation method, a card issuer must comply with the notice requirements in § 226.9(c)(2).

#### *55(e) Promotional Waivers or Rebates of Interest, Fees, and Other Charges*

Some card issuers offer promotional programs under which interest charges or fees will be waived or rebated so long as the consumer pays on time and otherwise complies with the account terms. For example, a card issuer might offer a promotion under which interest accrues on purchases at an annual percentage rate of 15% but will be waived for six months if the consumer pays on time each billing cycle. While this type of promotional program may be intended to encourage timely payment, a consumer who relies on the promotion when making transactions and then, for example, inadvertently pays one day late will experience a significant and potentially unexpected increase in the cost of those transactions. In contrast, if a consumer relies on a promotional rate when making transactions, TILA Section 171(b)(1) and § 226.55(b)(1) do not permit the card issuer to increase the cost of those transactions by revoking the promotional rate unless the account becomes more than 60 days past due. Thus, the Board is concerned that the revocation of promotional waiver or rebate programs based on so-called “hair trigger” violations of the account terms may be inconsistent with the purposes of the Credit Card Act.

In order to address these concerns, the Board proposed to use its authority under TILA Section 105(a) and Section 2 of the Credit Card Act to add a new § 226.55(e), which clarified that, if a card issuer promotes the waiver or rebate of interest, fees, or other charges subject to § 226.55, any cessation of the waiver or rebate constitutes an increase in a rate, fee, or charge for purposes of § 226.55. Thus, for example, if a card issuer promotes an interest waiver program, the card issuer must comply with § 226.55(b)(1) by disclosing the length of the promotion and the rate that will apply after the promotion expires. Furthermore, the card issuer would be prohibited from effectively increasing the interest charges for existing balances by ceasing or terminating the waiver

during the promotional period, unless the account becomes more than 60 days delinquent consistent with § 226.55(b)(4).

Comments from a member of Congress, consumer groups, and a credit card issuer supported § 226.55(e) on the grounds that it is necessary to prevent evasion of the Credit Card Act’s limitations on card issuers’ ability to increase the costs associated with existing balances. In contrast, some industry commenters opposed § 226.55(e), arguing that it would unnecessarily restrict issuers’ ability to offer waivers and rebates that benefit consumers. However, because § 226.55(e) permits card issuers to offer waiver or rebate programs that are consistent with the Credit Card Act’s limitations and generally does not restrict issuers’ ability to waive or rebate interest, fee, and other charges on an individualized basis (as discussed below), the Board does not believe that it will result in a substantial reduction in benefits for consumers. Accordingly, in order to ensure that consumers’ existing credit card balances receive the protections in the Credit Card Act and § 226.55, the Board is adopting § 226.55(e) as proposed.

As discussed in the proposal, § 226.55(e) is intended to address *promotional* programs involving waivers or rebates of interest, fees, and charges. The Board does not intend to restrict a card issuer’s ability to waive or rebate interest, fees, or other charges in order to resolve disputes, address compliance concerns, or retain customers. Accordingly, proposed comment 55(e)–1 clarified that nothing in § 226.55 prohibits a card issuer from waiving or rebating finance charges due to a periodic interest rate or a fee or charge required to be disclosed under § 226.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii). This proposed comment also provided examples of promotional waiver or rebate programs that would comply with § 226.55. In order to address concerns raised by consumer group commenters, the Board has revised this comment to clarify that § 226.55(e) applies to both temporary and permanent terminations of waivers or rebates as well as to both partial and full terminations. Otherwise, this comment is adopted as proposed.

Proposed comment 55(e)–2 clarified the circumstances under which a card issuer would be considered to promote a waiver or rebate program for purposes of § 226.55(e). As a general matter, this comment followed the existing guidance regarding advertisements in § 226.2(a)(2) and the accompanying commentary. Thus, under the proposed guidance, a

card issuer promotes a waiver or rebate program for purposes of § 226.55(e) if, for example, it discloses the waiver or rebate in a newspaper, magazine, leaflet, promotional flyer, catalog, sign, or point-of-sale display. Similarly, a card issuer promotes a waiver or rebate program for purposes of § 226.55(e) if it discloses the waiver or rebate on radio or television or through electronic advertisements (such as on the Internet). See comment 2(a)(2)–1.i. In contrast, a card issuer generally does not promote a program for purposes of § 226.55(e) if it discloses the waiver or rebate in a communication that is not an advertisement for purposes of § 226.2(a)(2), such as in educational materials that do not solicit business. See comment 2(a)(2)–1.ii.

However, the proposed comment deviated from the guidance in comment 2(a)(2)–1 in one important respect. Comments 2(a)(2)–1.ii.A and F provide, respectively, as examples of communications that are not advertisements “direct personal contacts” and “[c]ommunications about an existing credit account (for example, a promotion encouraging additional or different uses of an existing credit card account).” While these exclusions are appropriate for purposes of § 226.2(a)(2), the Board believes that it would be inconsistent with the purpose of § 226.55(e) to exclude from coverage direct personal contacts regarding waiver or rebate programs or the promotion of waiver or rebate programs to existing accountholders. Accordingly, proposed comment 55(e)–2 clarified that programs disclosed to existing accountholders through direct personal contacts or otherwise are generally subject to § 226.55(e), unless the disclosure is either provided in relation to an inquiry or dispute about a specific charge or occurs after the card issuer has waived or rebated the interest, fees, or other charges. Thus, the comment clarified that a card issuer is not promoting a waiver or rebate for purposes of § 226.55(e) if, for example, a consumer calls the issuer to dispute a fee that appears on his or her periodic statement and the issuer offers to waive the fee in order to resolve the dispute. Similarly, a card issuer is not promoting a waiver or rebate if it waives interest charges that were erroneously imposed and then discloses that waiver on a periodic statement or in a letter. This guidance is consistent with the Board’s desire to avoid restricting card issuers’ ability to waive or rebate interest, fees, or other charges in order to resolve disputes, address compliance concerns, or retain customers.

Proposed comment 55(e)-2 also provided a number of additional examples of circumstances in which a waiver or rebate is not promoted for purposes of § 226.55(e), including when a card issuer communicates with a consumer about a waiver or rebate in relation to an inquiry or dispute about a specific charge, when a card issuer waives or rebates interest, fees, or other charges in order to comply with a legal requirement (such as the fee limitations in § 226.52(a)), when a card issuer discloses a grace period, and when a card issuer provides an undisclosed period after the payment due date during which interest, fees, or other charges are waived or rebated even if a payment has not been received. The Board solicited comment on other examples of circumstances in which a card issuer may waive or rebate interest, fees, or charges subject to § 226.55 without promoting the waiver or rebate.

Industry commenters argued that a number of additional categories of communications should not be considered promotion under § 226.55(e), including any offer of a waiver or rebate in connection with a “customer accommodation” or “customer service policy,” an offer of a waiver or rebate made to “maintain a relationship,” or “actions or conditions outside the credit card account relationship.” The Board is concerned that these exclusions would be too vague to accomplish the purposes of § 226.55(e) or to provide clear guidance to card issuers. Furthermore, as noted above, comment 55(e)-2 clarifies that § 226.55(e) does not interfere with a card issuer’s ability to accommodate customers or maintain customer relationships by, for example, disclosing a waiver in relation to a consumer’s inquiry or dispute about a specific charge or disclosing a waiver after the fact. In addition, although industry commenters suggested that communications regarding waivers or rebates offered in relation to workout or temporary hardship arrangements not be considered promotions for purposes of § 226.55(e), the Board does not believe that such an exclusion is necessary because, consistent with § 226.55(b)(5), a card issuer may waive or rebate fees and charges subject to § 226.55 during a workout or temporary hardship arrangement and then return the fee or charge to its previous amount once the arrangement ends.

Consumer group commenters argued that, for purposes of § 226.55(e), promotion should include any disclosure of a prospective waiver or rebate unless the waiver or rebate is provided in response to a consumer inquiry or dispute. The Board is

concerned, however, that this definition of promotion may be overbroad.

Consumer group commenters also objected to the guidance in proposed comment 55(e)-2 clarifying that a card issuer is not promoting a waiver or rebate for purposes of § 226.55(e) if it provides benefits (such as rewards points or cash back based on purchases or finance charges) that can be applied to the account as credits, provided that the benefits are not promoted as reducing interest, fees, or other charges subject to § 226.55. These commenters argued that such programs are sufficiently similar to promotional waiver or rebate programs that they should be subject to the same requirements. The Board disagrees, provided that—as stated in comment 55(e)-2—the card issuer does not promote the rewards as reducing interest, fees, or other charges.

In the proposal, the Board noted that many card issuers promote rewards programs under which consumers can earn points, cash back, or similar benefits based on purchases, interest charges, or other factors. The Board further noted that some card issuers condition these benefits on the consumer making timely payments and otherwise complying with the account terms. Because TILA Sections 171 and 172 do not address these types of benefits, the loss of rewards generally does not raise the same concerns regarding circumvention as the loss of a waiver or rebate of interest, fees, or other charges subject to § 226.55. Accordingly, although the Board has made certain non-substantive revisions to comment 55(e)-2, it is otherwise adopted as proposed.

Finally, proposed comment 55(e)-3 provided guidance regarding the relationship between § 226.55(e) and a grace period. Specifically, this comment clarified that § 226.55(e) does not apply to the waiver of finance charges due to a periodic rate consistent with a grace period, as defined in § 226.5(b)(2)(ii)(3). The Board did not receive any significant comment on this guidance, which is adopted as proposed.

#### *Section 226.58 Internet Posting of Credit Card Agreements*

##### *58(b) Definitions*

###### *58(b)(1) Agreement*

Section 226.58(b)(1) defines “agreement” or “credit card agreement” as a written document or documents evidencing the terms of the legal obligation or the prospective legal obligation between a card issuer and a consumer for a credit card account under an open-end (not home-secured)

consumer credit plan, as defined in § 226.2(a)(15). The Board did not propose any changes to § 226.58(b)(1). One commenter asked the Board to exclude from the scope of § 226.58 lines of credit accessed by debit cards that can be used only at automated teller machines. These products are credit card accounts under an open-end (not home-secured) consumer credit plan, as defined in § 226.2(a)(15), and agreements related to these products therefore fall within the § 226.58(b)(1) definition. The commenter argued that these products do not function like other credit cards and that including agreements for these products in the Board’s database would not facilitate comparison shopping by consumers.

The Board is not adopting this suggested change. When adopting the February 2010 Final Rule, the Board considered several comments requesting that the Board exclude lines of credit accessed by a debit card that can be used only at automated teller machines from the requirements of the Credit Card Act generally. The Board declined to exclude these products, citing Congress’s apparent intent that the Credit Card Act apply broadly and the lack of an alternative regulatory regime for these products. *See* 75 FR 7664. Consistent with the approach the Board has taken in implementing other sections of the Credit Card Act, lines of credit accessed by debit cards that can be used only at automated teller machines remain subject to § 226.58.

###### *58(b)(4) Card Issuer*

The Board proposed to add new § 226.58(b)(4) to define the term “card issuer” solely for purposes of § 226.58. The proposed definition provided that, solely for purposes of § 226.58, card issuer or issuer means the entity to which a consumer is legally obligated, or would be legally obligated, under the terms of a credit card agreement. The Board also proposed to add new comment 58(b)(4)-1 to provide an example of how the definition of card issuer would apply.

One commenter objected to the addition of the definition of card issuer. This commenter stated that, given the complex nature of the relationships between institutions that partner to issue credit cards, the Board should not mandate which institution must make quarterly submissions to the Board or post agreements on its Web site under § 226.58. This commenter also argued that the Board should not adopt the proposed definition unless the Board is aware of actual confusion regarding the allocation of responsibilities under § 226.58.



The Board continues to believe that it is appropriate to adopt the definition of card issuer as proposed. It is precisely because of the complex nature of relationships between institutions that partner to issue credit cards that the Board believes it is beneficial to adopt the proposed definition. The Board understands that these relationships can vary, for example, with respect to which institution uses its name and brand in marketing materials, develops and implements underwriting criteria, sets interest rates and other terms, approves applications, provides monthly statements and other disclosures to consumers, collects payments, and absorbs the risk of default or fraud. Without a bright-line rule defining which institution is the issuer, institutions may find it difficult to determine their obligations under § 226.58. Indeed, the Board understands that there is significant uncertainty regarding the application of § 226.58 where institutions partner to issue credit cards. For example:

- The de minimis exception in § 226.58(c)(5) provides that an issuer is not required to submit agreements to the Board under § 226.58(c)(1) if the issuer has fewer than 10,000 open credit card accounts as of the last business day of the calendar quarter. If two institutions are involved in issuing a credit card, one institution may have fewer than 10,000 open accounts while the other has more than 10,000 open accounts. It may be difficult to determine whether the de minimis exception applies in such a case.

- Section 226.58(d) requires an issuer to post and maintain on its publicly available Web site the credit card agreements the issuer is required to submit to the Board. Where two institutions are involved in issuing a credit card, it may be unclear which institution should post and maintain the agreements on its Web site.

- Similarly, § 226.58(e)(2) provides that an issuer that does not maintain an interactive Web site is permitted to allow individual cardholders to request copies of their agreements solely by calling a readily available telephone line, rather than both by using the issuer's Web site and by calling a readily available telephone line. If two institutions are involved in issuing a credit card, one institution may maintain a Web site from which cardholders can access specific information about their accounts while the other does not. In such cases, it may be difficult to determine whether the § 226.58(e)(2) special rule applies.

The Board is adopting the § 226.58(b)(4) definition of card issuer

and comment 58(b)(4)–1 as proposed. The definition would apply solely with respect to § 226.58 and would not change the definition of card issuer for purposes of other provisions of Regulation Z. Also as proposed, the Board is renumbering § 226.58(b)(4), (b)(5), (b)(6), and (b)(7) as § 226.58(b)(5), (b)(6), (b)(7), and (b)(8), respectively, and is making conforming changes to references to these subsections.

Based on its review of the comments and further analysis, the final rule also includes new comments 58(b)(4)–2 and 58(b)(4)–3, which provide additional clarification regarding the application of § 226.58 to institutions that partner to issue credit cards. Comment 58(b)(4)–2 provides that an institution that is the card issuer as defined in § 226.58(b)(4) has a legal obligation to comply with the requirements of § 226.58. However, the comment clarifies that a card issuer generally may use a third-party service provider to satisfy its obligations under § 226.58, provided that the issuer acts in accordance with regulatory guidance regarding use of third-party service providers and other applicable regulatory guidance. In some cases, an issuer may wish to arrange for the institution with which it partners to issue credit cards to fulfill the requirements of § 226.58 on the issuer's behalf.

For example, a retailer and a bank work together to issue credit cards. Under § 226.58(b)(4), the bank is the issuer of these credit cards for purposes of § 226.58. However, the retailer services the credit card accounts, including mailing account opening materials and periodic statements to cardholders. While the bank is responsible for ensuring compliance with § 226.58, the bank may arrange for the retailer (or another appropriate third-party service provider) to submit credit card agreements to the Board under § 226.58 on the bank's behalf. The bank must comply with regulatory guidance regarding use of third-party service providers and other applicable regulatory guidance.

Comment 58(b)(4)–3 provides additional information regarding the posting of agreements on issuer Web sites when institutions partner to issue credit cards. As explained in comments 58(d)–2 and 58(e)–3, discussed below, if an issuer provides cardholders with access to specific information about their individual accounts, such as balance information or copies of statements, through a third-party Web site, the issuer is deemed to maintain that Web site for purposes of § 226.58. Such a Web site is deemed to be maintained by the issuer for purposes of

§ 226.58 even where, for example, an unaffiliated entity designs the Web site and owns and maintains the information technology infrastructure that supports the Web site, cardholders with credit cards from multiple issuers can access individual account information through the same Web site, and the Web site is not labeled, branded, or otherwise held out to the public as belonging to the issuer. A partner institution's Web site is an example of a third-party Web site that may be deemed to be maintained by the issuer for purposes of § 226.58.

For example, a retailer and a bank work together to issue credit cards. Under § 226.58(b)(4), the bank is the issuer of these credit cards for purposes of § 226.58. The bank does not have a Web site. However, cardholders can access information about their individual accounts, such as balance information and copies of statements, through a Web site maintained by the retailer. The retailer designs the Web site and owns and maintains the information technology infrastructure that supports the Web site. The Web site is branded and held out to the public as belonging to the retailer. Because cardholders can access information about their individual accounts through this Web site, the Web site is deemed to be maintained by the bank for purposes of § 226.58. The bank therefore may comply with § 226.58(d) by ensuring that agreements offered to the public are posted on the retailer's Web site in accordance with § 226.58(d). The bank may comply with § 226.58(e) by ensuring that cardholders can request copies of their individual agreements through the retailer's Web site in accordance with § 226.58(e)(1). The bank need not create and maintain a Web site branded and held out to the public as belonging to the bank in order to comply with § 226.58(d) and (e) as long as the bank ensures that the retailer's Web site complies with these sections.

Comment 58(b)(4)–3 also notes that § 226.58(d)(1) provides that, with respect to an agreement offered solely for accounts under one or more private label credit card plans, an issuer may comply with § 226.58(d) by posting the agreement on the publicly available Web site of at least one of the merchants at which credit cards issued under each private label credit card plan with 10,000 or more open accounts may be used. The comment clarifies that this rule is not conditioned on cardholders' ability to access account-specific information through the merchant's Web site.

*58(b)(6) Pricing Information*

The Board proposed to amend the § 226.58(b)(6) definition of “pricing information” to omit the information listed in § 226.6(b)(4). The Board solicited comment on whether the definition of pricing information should continue to include some or all of the additional disclosure regarding rates specified in § 226.6(b)(4), or whether the Board should omit this disclosure from the definition. Commenters generally supported this revision, which is adopted as proposed.

*58(c) Submission of Agreements to Board**58(c)(1) Quarterly Submissions*

*Quarterly Submission Deadlines.* The Board proposed to amend § 226.58(c)(1) to state that quarterly submissions must be sent to the Board no later than the first business day on or after January 31, April 30, July 31, and October 31 of each year. These quarterly submission deadlines were inadvertently omitted from the February 2010 Final Rule. The Board received no comments objecting to this change and is adopting the amendment to § 226.58(c)(1) as proposed.

*Submission of Amended Agreements.* The Board proposed to revise § 226.58(c)(1)(iii) to clarify that an issuer is required to submit an amended agreement to the Board only if the issuer offered the amended agreement to the public as of the last business day of the preceding calendar quarter. Amended agreements that the issuer no longer offered to the public as of the last business day of the preceding calendar quarter are not required to be submitted to the Board.

The Board received no comments objecting to this change and is adopting the proposed revision to § 226.58(c)(1)(iii). The Board also is adopting the corresponding revisions to § 226.58(c)(3), as discussed below.

*Notice of Withdrawal of Agreements.* The Board proposed to amend § 226.58(c)(1)(iv) to include cross references to § 226.58(c)(6) and (c)(7), in addition to § 226.58(c)(4) and (c)(5). These cross references were unintentionally omitted from the February 2010 Final Rule. The Board received no comments objecting to this change and is adopting the amendment to § 226.58(c)(1)(iv) as proposed.

*58(c)(2) Timing of First Two Submissions*

The Board proposed to delete the special rules in § 226.58(c)(2) for the initial and second submissions to the Board and to reserve § 226.58(c)(2).

Section 226.58(c)(2) provided special rules for the timing and contents of submissions required to be sent to the Board by February 22, 2010, and August 2, 2010. Because the February 22, 2010, and August 2, 2010, deadlines have passed, § 226.58(c)(2) has no prospective relevance. The Board received no comments objecting to this change. As proposed, the special rules are deleted and § 226.58(c)(2) is reserved.

*58(c)(3) Amended Agreements*

The Board proposed to amend § 226.58(c)(3) to clarify that an issuer is required to submit an amended agreement to the Board only if the issuer offered the amended agreement to the public as of the last business day of the preceding calendar quarter. Amended agreements that the issuer no longer offered to the public as of the last business day of the calendar quarter should not be submitted to the Board. The Board also proposed to revise comment 58(c)(3)–2 to reflect this clarification and to add new comment 58(c)(3)–3, which provides an example of the application of revised § 226.58(c)(3). The Board also proposed to renumber existing comment 58(c)(3)–3, regarding change-in-terms notices, as 58(c)(3)–4. The Board received no comments objecting to these changes and is adopting them as proposed.

*58(c)(8) Form and Content of Agreements Submitted to the Board*

The Board proposed to revise § 226.58(c)(8)(i)(C)(1) to clarify that billing rights notices are not deemed to be part of the agreement for purposes of § 226.58 and therefore are not required to be included in agreements submitted to the Board. As the Board noted in its proposal, § 226.58(c)(8)(i)(C)(1) is not intended to provide an exhaustive list of the State and Federal law disclosures that are not deemed to be part of an agreement under § 226.58. As indicated by the use of the phrase “such as,” the listed disclosures are merely examples of “disclosures required by state or federal law.” The Board does not believe it is feasible to include in § 226.58(c)(8)(i)(C)(1) a comprehensive list of all such disclosures, as such a list would be extensive and would change as State and Federal laws and regulations are amended. However, because billing rights notices appear to be a specific source of confusion for card issuers and others, the Board proposed to address their treatment by amending § 226.58(c)(8)(i)(C)(1).

Two commenters expressed their support for this change. No commenters objected. The Board is adopting the

revision to § 226.58(c)(8)(i)(C)(1) as proposed.

Section 226.58(c)(8)(ii)(A) states that pricing information must be set forth in a single addendum that contains only the pricing information. The Board did not propose any changes to § 226.58(c)(8)(ii)(A). However, one commenter asked the Board to allow creditors submitting agreements to the Board to include additional disclosures in the addendum. The commenter stated that some creditors use complex automated systems to prepare the addenda that are submitted to the Board. Removing information that is not required therefore may impose burdensome programming costs on some issuers.

Section 226.58(c)(8)(i)(C) specifies that certain items, such as disclosures required by State or Federal law, are not deemed to be part of an agreement for purposes of § 226.58 and therefore are not required to be included in submissions to the Board. The Board notes, however, that issuers are not prohibited by this or any other provision of § 226.58 from including these items in submitted agreements if an issuer chooses to do so. The Board believes it is appropriate to provide similar flexibility with respect to information included in the pricing information addendum under § 226.58(c)(8)(ii) and therefore is amending this section.

As amended, § 226.58(c)(8)(ii)(A) continues to provide that pricing information must be set forth in a single addendum to the agreement. However, under amended § 226.58(c)(8)(ii)(A), issuers are permitted, but not required, to include in this addendum any other information listed in § 226.6(b) regarding account-opening disclosures for open-end (not home-secured) plans, provided that the information is complete and accurate as of the applicable date under § 226.58.

The Board continues to believe that certain information listed in § 226.6(b) is unlikely to substantially assist consumers in shopping for a credit card, and therefore should not be required in agreements submitted to the Board under § 226.58. For example, the Board continues to believe that the Web site reference and billing error rights reference required to be included in account-opening disclosures by §§ 226.6(b)(2)(xiv) and (b)(2)(xv) are not useful bases for comparison shopping because they do not vary, and therefore are not necessary in agreements submitted to the Board under § 226.58. However, it appears that amending § 226.58(c)(8)(ii)(A) to permit the inclusion of other information listed in

§ 226.6(b) will reduce the compliance burden for some issuers without undermining the usefulness of the agreements provided pursuant to § 226.58.

*58(d) Posting of Agreements Offered to the Public*

Section 226.58(d) requires card issuers to post and maintain on their publicly available Web site the credit card agreements that the issuer submits to the Board under § 226.58(c). As discussed above, the Board understands that there has been some confusion regarding the application of § 226.58 where institutions partner to issue credit cards. In order to provide additional information regarding the application of § 226.58 to these relationships, the Board is adopting new § 226.58(b)(4), defining card issuer for purposes of § 226.58, and new comments 58(b)(4)–1, 58(b)(4)–2, and 58(b)(4)–3, discussed above. The Board also is revising comment 58(e)–3 to clarify the application of § 226.58(e) to institutions that provide cardholders with access to account-specific information through Web sites maintained by third parties, as discussed below. Because the Board believes it also would be beneficial to provide similar clarification regarding § 226.58(d), the final rule includes corresponding revisions to comment 58(d)–2.

Comment 58(d)–2 explains that, unlike § 226.58(e), § 226.58(d) does not include a special rule for card issuers that do not otherwise maintain a Web site. If a card issuer is required to submit one or more agreements to the Board under § 226.58(c), that card issuer must post those agreements on a publicly available Web site it maintains (or, with respect to a private label credit card, on the publicly available Web site of at least one of the merchants at which the card may be used, as provided in § 226.58(d)(1)). As revised, comment 58(d)–2 clarifies that if an issuer provides cardholders with access to specific information about their individual accounts, such as balance information or copies of statements, through a third-party Web site, the issuer is deemed to maintain that Web site for purposes of § 226.58. Such a Web site is deemed to be maintained by the issuer for purposes of § 226.58 even where, for example, an unaffiliated entity designs the Web site and owns and maintains the information technology infrastructure that supports the Web site, cardholders with credit cards from multiple issuers can access individual account information through the same Web site, and the Web site is

not labeled, branded, or otherwise held out to the public as belonging to the issuer. Therefore, issuers that provide cardholders with access to account-specific information through a third-party Web site can comply with § 226.58(d) by ensuring that the agreements the issuer submits to the Board are posted on the third-party Web site in accordance with § 226.58(d). To avoid potential confusion, revised comment 58(d)–2 also notes that, in contrast, the § 226.58(d)(1) rule regarding agreements for private label credit cards is not conditioned on cardholders' ability to access account-specific information through the merchant's Web site.

*58(e) Agreements for All Open Accounts*  
*58(e)(2) Special Rule for Issuers Without Interactive Web Sites*

The Board proposed to revise comment 58(e)–3 to clarify the application of § 226.58(e)(2) to issuers that provide online access to individual account information through third-party interactive Web sites. Section 226.58(e)(2) provides that an issuer that does not maintain an interactive Web site (*i.e.*, a Web site from which a cardholder can access specific information about his or her individual account) may provide cardholders with the ability to request a copy of their agreements by calling a readily available telephone line, the number for which is: (1) Displayed on the issuer's Web site and clearly identified as to purpose; or (2) included on each periodic statement sent to the cardholder and clearly identified as to purpose.

The Board understands that some issuers provide cardholders with access to specific information about their individual accounts, such as balance information or copies of statements, through a third-party interactive Web site. As revised, comment 58(e)–3 clarifies that, in these circumstances, an issuer is considered to maintain an interactive Web site for purposes of the § 226.58(e)(2) special rule. Such a Web site is deemed to be maintained by the issuer for purposes of § 226.58(e)(2) even where, for example, an unaffiliated entity designs the Web site and owns and maintains the information technology infrastructure that supports the Web site, cardholders with credit cards from multiple issuers can access individual account information through the same Web site, and the Web site is not labeled, branded, or otherwise held out to the public as belonging to the issuer. An issuer that provides cardholders with access to specific information about their individual

accounts through such a Web site is not permitted to use the procedures described in the § 226.58(e)(2) special rule. Instead, such an issuer must comply with § 226.58(e)(1).

The Board did not receive any comments objecting to the proposed revision of comment 58(e)–3. The comment is revised as proposed.

*Section 226.59 Reevaluation of Rate Increases*

*59(a) General Rule*

Section 226.59 implements TILA Section 148, which was added by the Credit Card Act. TILA Section 148, as implemented in § 226.59(a), generally requires card issuers that increase an annual percentage rate applicable to a credit card account under an open-end (not home-secured) consumer credit plan, based on the credit risk of the consumer, market conditions, or other factors, to evaluate factors described in the rule no less frequently than once every six months and, as appropriate based upon that review, reduce the annual percentage rate applicable to the consumer's account. Consistent with TILA Section 148, § 226.59 generally applies to rate increases made on or after January 1, 2009.

Since publication of the June 2010 Final Rule, several issuers requested additional clarification regarding what constitutes a rate increase for purposes of § 226.59. In particular, issuers requested additional guidance regarding the circumstances in which a change in the type of rate—for example, from a non-variable rate to a variable rate—is considered to be a rate increase triggering review obligations under § 226.59.

The Board proposed new comment 59(a)(1)–3 to clarify the applicability of the rate reevaluation requirements when a card issuer changes the type of rate applicable to a credit card account under an open-end (not home-secured) consumer credit plan.<sup>26</sup> Proposed comment 59(a)(1)–3.i provided that a change from a variable rate to a non-variable rate or from a non-variable rate to a variable rate generally is not a rate increase for purposes of § 226.59, if the rate in effect immediately prior to the change in the type of rate is equal to or greater than to the rate in effect immediately after the change. The proposed comment stated that, for example, a change from a variable rate of 15.99% to a non-variable rate of 15.99% is not a rate increase for purposes of § 226.59 at the time of the change. Proposed comment 59(a)(1)–3.i

<sup>26</sup> The proposal would have renumbered existing comments 59(a)(1)–3 and 59(a)(1)–4 accordingly.

also cross-referenced § 226.55 for limitations on the permissibility of changing from a non-variable rate to a variable rate.

Proposed comment 59(a)(1)–3.ii set forth special guidance regarding a change from a non-variable to a variable rate. Proposed comment 59(a)(1)–3.ii stated that a change from a non-variable to a variable rate constitutes a rate increase for purposes of § 226.59 if the variable rate exceeds the non-variable rate that would have applied if the change in type of rate had not occurred. The proposed comment illustrated the applicability of § 226.59 to a change from a non-variable to a variable rate with the following example: assume a new credit card account under an open-end (not home-secured) consumer credit plan is opened on January 1 of year 1 and that a non-variable annual percentage rate of 12% applies to all transactions on the account. On January 1 of year 2, upon 45 days' advance notice pursuant to § 226.9(c)(2), the rate on all new transactions is changed to a variable rate that is currently 12% and is determined by adding a margin of 10 percentage points to a publicly-available index not under the card issuer's control. The change from the 12% non-variable rate to the 12% variable rate is not a rate increase for purposes of § 226.59(a). On April 1 of year 2, the value of the variable rate increases to 12.5%. The increase in the variable rate from 12% to 12.5% is a rate increase for purposes of § 226.59, and the card issuer must begin periodically conducting reviews of the account pursuant to § 226.59.

Similarly, proposed comment 59(a)(1)–3.iii stated that a change from a variable to a non-variable rate constitutes a rate increase for purposes of § 226.59 if the non-variable rate exceeds the variable rate that would have applied if the change in the type of rate had not occurred. The proposed comment set forth the following illustrative example: assume a new credit card account under an open-end (not home-secured) consumer credit plan is opened on January 1 of year 1 and that a variable annual percentage rate that is currently 15% and is determined by adding a margin of 10 percentage points to a publicly-available index not under the card issuer's control applies to all transactions on the account. On January 1 of year 2, upon 45 days' advance notice pursuant to § 226.9(c)(2), the rate on all existing balances and new transactions is changed to a non-variable rate that is currently 15%. The change from the 15% variable rate to the 15% non-variable rate on January 1 of year 2 is

not a rate increase for purposes of § 226.59(a). On April 1 of year 2, the value of the variable rate that would have applied to the account decreases to 12.5%. Accordingly, on April 1 of year 2, the non-variable rate of 15% exceeds the 12.5% variable rate that would have applied but for the change in type of rate. At this time, the change to the non-variable rate of 15% constitutes a rate increase for purposes of § 226.59, and the card issuer must begin periodically conducting reviews of the account pursuant to § 226.59.

One credit union trade association supported proposed comment 59(a)(1)–3. Other industry commenters generally supported the portion of the proposal that clarified that a change to the type of rate is not a rate increase for purposes of § 226.59 if the rate following the change is equal or less than to the rate prior to the change. However, industry commenters opposed the proposed commentary to § 226.59(a) that provided that such a change in type of rate does constitute a rate increase for purposes of § 226.59 at the point in time when the rate that applies (whether variable or non-variable) exceeds the rate that would have applied if the change in the type of rate had not occurred. Several of these commenters argued that reevaluation of a rate increase due to a change in a prediscovered index that is beyond the control of the issuer is not necessary and that TILA Section 148 was not intended to cover rate increases where the change is due to an increase in an index beyond the issuer's control. These commenters urged the Board to modify the proposal to provide that issuers must conduct a rate reevaluation under § 226.59 only if the rate that applies immediately after the change in type of rate exceeds the rate that applied prior to the change. One commenter raised particular concerns regarding portfolio-wide changes to variable rate structures, such as the removal of rate floors or conversions from non-variable to variable rates, that were implemented in order to facilitate compliance with the Credit Card Act.

Consumer group commenters, on the other hand, opposed the portion of proposed comment 59(a)(1)–3 that would provide that a change in type of rate is not an increase when, at the time of the change, the result is an equal or lower rate. These commenters expressed particular concern regarding changes from non-variable to variable rates and urged the Board to treat the change in type of rate as triggering review requirements under § 226.59, in all cases, at the time of the change. Consumer groups were particularly concerned that, as proposed, comment

59(a)(1)–3 could permit an issuer to review only the increase in the index used to compute the variable rate, and would not require consideration of the margin selected for determination of the new variable rate at the time of the change. These commenters raised an example of a consumer's rate being changed from a non-variable rate of 15% to a rate determined by adding a margin of 10% to a prime rate. As proposed, these commenters were concerned that § 226.59 and comment 59(a)(1)–3 would not require the issuer to review the decision to impose a margin of 10% on the consumer's account.

The Board is generally adopting comment 59(a)(1)–3 as proposed. The Board believes, as stated in the supplementary information to the June 2010 Final Rule, that the rate reevaluation requirements of TILA Section 148 as implemented in § 226.59 should not apply to an increase in a variable rate due to fluctuations in the index on which that rate is based. See 75 FR 37549. Accordingly, the Board used its authority under TILA Section 105(a) to provide that § 226.59(a) applies only to those rate increases for which 45 days' advance notice is required under § 226.9(c)(2) or (g). For example, if a card issuer discloses at account-opening a variable rate applicable to purchases, currently 15.99%, that will vary based on an index outside the issuer's control, there is no review requirement when that variable rate increases to 16.99% due to fluctuations in the index. However, the Board believes that it would be inconsistent with the intent of TILA Section 148 to create an exception to the review requirements of § 226.59 in the circumstances where the rate increase would not have occurred but for the issuer changing the type of rate. In those circumstances, from the consumer's perspective, the change in type of rate resulted in a rate increase relative to the rate that would otherwise have applied to the account.

For example, assume that a consumer opens an account on January 1 of year one where the disclosed rate applicable to purchases is a non-variable rate of 12%. On June 1 of year 2, after providing 45 days' advance notice pursuant to § 226.9(c)(2), the issuer changes the rate applicable to the consumer's new purchases to a variable rate that is currently 12%. On September 1 of year 2, the variable rate increases to 12.99% due to fluctuations in an index outside of the control of the issuer. Given that the rate now exceeds the 12% rate disclosed to the consumer at account opening, the Board believes that a rate increase has occurred and

that it would be inappropriate to except this rate increase from § 226.59. The Board believes that it would be reasonable for a consumer in this situation to expect that purchases would continue to be subject to a 12% non-variable rate and that, accordingly, the subsequent increase in the rate to 12.99%, based on fluctuations in the value of the index, constitutes a rate increase from the perspective of that consumer. The Board believes that this situation is distinguishable from the situation where a consumer opens an account that is subject to a variable rate and, thus, is on notice from the time of account opening that the rate is subject to change in accordance with the relevant index.

As discussed in the proposal, the Board notes that in several other contexts, Regulation Z treats a change in a type of rate as equivalent to a rate increase. For example, comments 9(c)(2)(iv)-3 and 9(c)(2)(iv)-4 clarify that 45 days' advance notice is generally required under § 226.9(c)(2) when the annual percentage rate on an open-end (not home-secured) consumer credit plan is changed from a variable to a non-variable rate or from a non-variable to a variable rate. In addition, comment 55(b)(2)-4 treats changing a non-variable rate to a variable rate as equivalent to a rate increase for purposes of § 226.55.

The Board believes that this clarification regarding changes in types of rates is appropriate to effectuate the purposes of TILA Section 148. As discussed in the supplementary information to its final rule published on January 29, 2009, a change from one type of rate to another (*e.g.*, variable or non-variable) may, over time, result in the new rate being higher than the rate that would have applied but for the change, even if at the time of the change the prior rate exceeded the new rate. *See* 74 FR 5345. For this reason, as discussed above, comments 9(c)(2)(iv)-3 and 9(c)(2)(iv)-4 clarify that 45 days' advance notice is generally required under § 226.9(c)(2) when the annual percentage rate on an open-end (not home-secured) consumer credit plan is changed from a variable to a non-variable rate or from a non-variable to a variable rate. The Board believes that consistent treatment is generally appropriate under § 226.59, because a change in type of rate may, over time, result in a rate increase on a consumer's account; however, the Board is applying the review requirement under § 226.59 only if and when the new rate exceeds the rate that would have applied if the change in type of rate had not occurred. For example, a consumer who has an

existing account with a non-variable rate may have an expectation that the rate generally will not change. However, if the issuer changes the non-variable rate to a variable rate, an increase in the index value may result in the rate applicable to the consumer's account increasing, and exceeding the non-variable rate that previously applied. Accordingly, the Board believes that in such circumstances a rate increase has occurred and must be reviewed under § 226.59.

The Board notes that the removal of variable rate floors would not, by itself, give rise to review requirements pursuant to § 226.59. The removal of a variable rate floor, in the absence of other changes, can only result in a reduction in the annual percentage rate imposed on a consumer's account. *See* 75 FR 37550. However, to the extent that an issuer concurrently removed the floor applicable to a consumer's account and increased the margin at the same time, the Board believes that the change should be subject to the review requirements of § 226.59, if the rate following the change exceeds the rate in effect prior to the change.

In addition, industry commenters indicated that developing and maintaining a system to track rate increases that are tied to an index over time would be burdensome. These commenters noted that because index values may continue to rise and fall over a period of months or years, the proposal would in effect require issuers to track the new rate and rate in effect prior to the change in type of rate indefinitely. Several commenters requested that the final rule permit an issuer to cease reviewing the change in the index after a single review. The Board is aware that new comment 59(a)(1)-3 does impose an ongoing review requirement; however, the Board believes that this is consistent with the intent of TILA Section 148. In the June 2010 Final Rule, the Board expressly declined to adopt a specific time limit for the review obligation under § 226.59. *See* 75 FR 37559. The Board noted that TILA Section 148 does not expressly create such a time limit. The Board continues to believe that many issuers will implement automated systems to perform the periodic reevaluation of rate increases and, accordingly, once these systems are in place, there should not be undue burden associated with the ongoing review of accounts subject to § 226.59.

The Board has modified comments 59(a)(1)-3.ii and 59(a)(1)-3.iii from the proposal to address consumer groups' concerns that, as proposed, § 226.59 would require only that the issuer

review changes in the index on which a variable rate is based rather than the margin applicable to the consumer's account, when the rate increase results from a change in type of rate. As adopted, the examples in comments 59(a)(1)-3.ii and 59(a)(1)-3.iii clarify that the relevant rate increase for purposes of the reevaluation under § 226.59 is the increase from the rate (variable or non-variable) that would have applied if the change in type of rate had not occurred to the rate (variable or non-variable) that applies after the rate increase. For example, assume the consumer's account was subject to a non-variable rate of 8% prior to the change and was converted to a variable rate (index plus margin) that was also 8% on the effective date of the change. After six months, the consumer's rate increases—based on an increase in the index value—to a variable rate of 10%. The increase that must be evaluated for purposes of § 226.59 is the increase from the non-variable rate of 8% to a variable rate of 10%. In other words, the issuer may not review just the increase in the index value, *i.e.*, the change from a variable rate of 8% to a variable rate of 10%, but must also review the original rate conversion.

Several industry commenters indicated that it was unclear how an issuer must conduct the review required by § 226.59, for rate increases resulting from a change in type of rate, and urged the Board to clarify that § 226.59 does not require issuers to revert to the type of rate that applied to the account prior to the change. For example, if an issuer converted an account from a non-variable rate to a variable rate, these commenters urged the Board to provide that § 226.59 should under no circumstances require the issuer to convert the account back to a non-variable rate. The Board agrees that § 226.59 is not intended to dictate the type of rate that an issuer must apply to a consumer's account. Accordingly, the Board is renumbering existing comment 59(a)(1)-5 as comment 59(a)(1)-5.i and adopting a new comment 59(a)(1)-5.ii which would provide that if a rate increase subject to § 226.59 involves a change from a variable rate to a non-variable rate or from a non-variable rate to a variable rate, § 226.59 does not require that the issuer reinstate the same type of rate that applied prior to the change. However, the comment would explain that the amount of any rate decrease that is required must be determined based upon the card issuer's reasonable policies and procedures

under § 226.59(b) for consideration of factors described in § 226.59(a) and (d).

#### 59(d) Factors

Section 226.59(d) sets forth guidance regarding the factors that an issuer must consider when conducting reviews of a rate increase pursuant to § 226.59. Section 226.59(d)(1) sets forth the general rule and states that, except as provided in § 226.59(d)(2) (which is discussed below), a card issuer must review either: (1) the factors on which the increase in an annual percentage rate was originally based; or (2) the factors that the card issuer currently considers when determining the annual percentage rates applicable to similar new credit card accounts. Section 226.59(d)(2) sets forth a special rule for certain rate increases imposed between January 1, 2009 and February 21, 2010. Section 226.59(d)(2) provides that, when conducting the first two reviews required under § 226.59(a) for rate increases imposed between January 1, 2009 and February 21, 2010, an issuer must consider the factors that it currently considers when determining the annual percentage rates applicable to similar new credit card accounts, unless the rate increase was based solely upon factors specific to the consumer, such as a decline in the consumer's credit risk, the consumer's delinquency or default, or a violation of the terms of the account.

As discussed in the supplementary information to the June 2010 Final Rule, § 226.59(d)(2) was adopted to address the Board's concerns regarding portfolio-wide rate increases made following the enactment of the Credit Card Act but prior to the effective date of many of the substantive protections contained in the statute. Some rate increases that occurred prior to February 22, 2010 resulted from adjustments in issuers' pricing practices to take into account the limitations that the Credit Card Act imposed on rate increases on existing balances. The Board was concerned that permitting card issuers to review the factors on which the rate increase was based may not result in a meaningful review in these circumstances, because the legal restrictions imposed by the Credit Card Act have continuing application. In other words, if a card issuer were to consider the factors on which the rate increase was based—*i.e.*, the enactment of the Credit Card Act's legal restrictions regarding rate increases—it might determine that a rate decrease is not required.

Accordingly, the Board adopted § 226.59(d)(2) to require card issuers to consider, for a brief transition period,

the factors that they use when setting the rates applicable to similar new accounts for rate increases imposed prior to February 22, 2010, if the rate increase was not based on consumer-specific factors. For the reasons discussed in the supplementary information to the June 2010 Final Rule, the requirement to consider the factors that an issuer evaluates when setting the rates applicable to similar new accounts applies only during the first two review periods following the effective date of § 226.59 and only for rate increases imposed between January 1, 2009 and February 21, 2010.

For rate increases based solely on consumer behavior or other consumer-specific factors, § 226.59(d) does not distinguish between rate increases imposed prior to or after February 22, 2010. Accordingly, for such rate increases an issuer may consider either the factors on which the increase in an annual percentage rate was originally based or the factors that the card issuer currently considers when determining the annual percentage rates applicable to similar new credit card accounts. Consumer-specific factors, such as a consumer's credit score or payment history on the account, can and do change over time. Accordingly, the Board noted in the supplementary information to the June 2010 Final Rule that it believes consideration of the consumer-specific factors that an issuer considered when imposing the rate increase would result in a meaningful review and, where appropriate, rate decreases, for rate increases imposed between January 1, 2009 and February 21, 2010.

As discussed in the supplementary information to the November 2010 Proposed Rule, the Board understands that some confusion has arisen regarding compliance with the special rule set forth in § 226.59(d)(2) in the case where two rate increases occurred between January 1, 2009 and February 21, 2010, one of which was based on conditions that are not specific to the consumer and one of which was based on consumer-specific behavior. The Board understands that there is particular concern regarding the application of the rule if the issuer made a market-based rate increase and subsequently increased the rate to a penalty rate, due to a late payment or other consumer behavior that violates the terms of the account. The Board proposed a new comment 59(d)–6 to clarify the application of the rule in these circumstances. Proposed comment 59(d)–6 noted that § 226.59(d)(2) applies if an issuer increased the rate applicable to a credit card account under an open-

end (not home-secured) consumer credit plan between January 1, 2009 and February 21, 2010, and the increase was not based solely upon factors specific to the consumer. The proposed comment further noted that in some cases, a credit card account may have been subject to multiple rate increases during the period from January 1, 2009 to February 21, 2010. Some such rate increases may have been based solely upon factors specific to the consumer, while others may have been based on factors not specific to the consumer, such as the issuer's cost of funds or market conditions. The proposed comment clarified that in such circumstances, when conducting the first two reviews required under § 226.59, the card issuer may separately review: (A) rate increases imposed based on factors not specific to the consumer, using the factors described in § 226.59(d)(1)(ii) (as required by § 226.59(d)(2)); and (B) rate increases imposed based on consumer-specific factors, using the factors described in § 226.59(d)(1)(i). If the review of factors described in § 226.59(d)(1)(i) indicates that it is appropriate to continue to apply a penalty rate to the account as a result of the consumer's payment history or other behavior on the account, proposed comment 59(d)–6 clarified that § 226.59 permits the card issuer to continue to impose the penalty rate, even if the review of the factors described in § 226.59(d)(1)(ii) would otherwise require a rate decrease.

Proposed comment 59(d)–6.ii set forth the following example: Assume a credit card account was subject to a rate of 15% on all transactions as of January 1, 2009. On May 1, 2009, the issuer increased the rate on existing balances and new transactions to 18%, based upon market conditions or other factors not specific to the consumer or the consumer's account. Subsequently, on September 1, 2009, based on a payment that was received five days after the due date, the issuer increased the applicable rate on existing balances and new transactions from 18% to a penalty rate of 25%. When conducting the first review required under § 226.59, the card issuer reviews the rate increase from 15% to 18% using the factors described in § 226.59(d)(1)(ii) (as required by § 226.59(d)(2)), and separately but concurrently reviews the rate increase from 18% to 25% using the factors described in paragraph § 226.59(d)(1)(i). The review of the rate increase from 15% to 18% based upon the factors described in § 226.59(d)(1)(ii) indicates that a similarly situated new consumer would receive a rate of 17%. The review

of the rate increase from 18% to 25% based upon the factors described in § 226.59(d)(1)(i) indicates that it is appropriate to continue to apply the 25% penalty rate based upon the consumer's late payment. Section 226.59 permits the rate on the account to remain at 25%.

The Board noted in the proposal that the intent of the special rule in § 226.59(d)(2) was not to require card issuers to reduce penalty rates, if the consumer's credit risk or behavior on the account justifies the maintenance of a penalty rate in order to account for the additional risk of nonpayment posed by the consumer. The Board indicated that the clarification in proposed comment 59(d)–6 would be appropriate in order to ensure that § 226.59(d)(2) does not lead to unintended consequences in cases where a market-based rate increase and a rate increase due to the imposition of a penalty rate both occurred between January 1, 2009 and February 21, 2010.

The Board received no significant comment opposing comment 59(d)–6. Two industry commenters supported proposed comment 59(d)–6 and stated that it was prudent in light of safe and sound underwriting considerations. One of these commenters stated that the Board should clarify that comment 59(d)–6 applies to any rate increase based on factors specific to the consumer and not just to penalty rates. The Board is adopting comment 59(d)–6 generally as proposed, with several modifications to clarify that the comment applies to rates increased based on factors specific to the consumer, regardless of whether those rates are penalty rates. In particular, the last sentence of comment 59(d)–6.i as adopted states that if the review of factors described in § 226.59(d)(1)(i) indicates that it is appropriate to continue to apply a penalty or other increased rate to the account as a result of the consumer's payment history or other factors specific to the consumer, § 226.59 permits the card issuer to continue to impose the penalty or other increased rate, even if the review of the factors described in § 226.59(d)(1)(ii) would otherwise require a rate decrease.

#### *59(f) Termination of Obligation To Review Factors*

Section 226.59(f) generally provides that the obligation to conduct periodic reevaluations of a rate increase ceases to apply if the issuer reduces the annual percentage rate applicable to the account to a rate equal to or lower than the rate that was in effect immediately prior to the increase. The Board noted in the November 2010 Proposed Rule

that some confusion had arisen regarding the relationship between the general rule in § 226.59(a) and the termination provision in § 226.59(f). For example, a card issuer may periodically review a consumer's account on which the rate has been increased, consistent with § 226.59(d)(1)(ii), by evaluating the factors that it currently considers when determining the annual percentage rates applicable to similar new credit card accounts. In the course of conducting such a review, the card issuer may determine that it would offer a lower rate on a new account than the rate that applied, prior to the rate increase, to the existing account being reviewed. In these circumstances, issuers have asked the Board for guidance regarding the amount of the rate reduction required under § 226.59.

The Board proposed to clarify that in these circumstances, § 226.59 requires that the rate on the existing account be reduced to the rate that was in effect prior to the rate increase, not to the lower rate that would be offered to a comparable new consumer. To clarify the relationship between § 226.59(a) and (f), the Board proposed to adopt a new comment 59(f)–2, which set forth the following illustrative example: Assume that on January 1, 2011, a consumer opens a new credit card account under an open-end (not home-secured) consumer credit plan. The annual percentage rate applicable to purchases is 15%. Upon providing 45 days' advance notice and to the extent permitted under § 226.55, the card issuer increases the rate applicable to new purchases to 18%, effective on September 1, 2012. The card issuer conducts reviews of the increased rate in accordance with § 226.59 on January 1, 2013 and July 1, 2013, based on the factors described in § 226.59(d)(1)(ii). Based on the January 1, 2013 review, the rate applicable to purchases remains at 18%. In the review conducted on July 1, 2013, the card issuer determines that, based on the relevant factors, the rate it would offer on a comparable new account would be 14%. Consistent with § 226.59(f), § 226.59(a) requires that the card issuer reduce the rate on the existing account to the 15% rate that was in effect prior to the September 1, 2012 rate increase.

Commenters who addressed proposed comment 59(f)–2 supported this aspect of the proposal and, accordingly, comment 59(f)–2 is adopted as proposed. As noted in the supplementary information to the November 2010 Proposed Rule, the review requirements of TILA Section 148 are triggered only if an annual percentage rate applicable to a credit

card account is increased. The Board believes that if Congress had intended for all annual percentage rates on all credit card accounts to be reviewed indefinitely, regardless of whether the account is subject to a rate increase, it would have so provided in the Credit Card Act. Accordingly, the Board continues to believe that it would be inappropriate to require card issuers to reduce a rate on a credit card account to a rate that is lower than the rate that applied to the account prior to the increase.

#### *Appendix M1—Repayment Disclosures*

As discussed in the section-by-section analysis to § 226.7(b)(12), Appendix M1 contains guidance for how to calculate the repayment disclosures required to be disclosed under § 226.7(b)(12). Specifically, § 226.7(b)(12)(i) generally requires card issuers to disclose the following repayment disclosures on each periodic statement: (1) A "warning" statement indicating that making only the minimum payment will increase the interest the consumer pays and the time it takes to repay the consumer's balance; (2) the length of time it would take to repay the outstanding balance if the consumer pays only the required minimum monthly payments and no further advances are made; (3) the total cost to the consumer of paying the balance in full if the consumer pays only the required minimum monthly payments and no further advances are made; (4) the minimum payment amount that would be required for the consumer to pay off the outstanding balance in 36 months, if no further advances are made; (5) the total cost to the consumer of paying the balance in full if the consumer pays the balance over 36 months; (6) the total savings of paying the balance in 36 months (rather than making only minimum payments); and (7) a toll-free telephone number at which the consumer may receive information about accessing consumer credit counseling.

Section 226.7(b)(12)(i) and (ii) provides that card issuers must round the following disclosures to the nearest whole dollar when disclosing them on the periodic statement: (1) The minimum payment total cost estimate, (2) the estimated minimum payment for repayment in 36 months, (3) the total cost estimate for repayment in 36 months, and (4) the savings estimate for repayment in 36 months. See 226.7(b)(12)(i)(C), (b)(12)(i)(F)(1)(i), (b)(12)(i)(F)(1)(iii), (b)(12)(i)(F)(1)(iv) and (b)(12)(ii)(C). For the reasons discussed in the section-by-section analysis to § 226.7(b)(12), in the November 2010 Proposed Rule, the Board proposed to

revise § 226.7(b)(12)(i) and (ii) to allow card issuers to round these disclosures to either the nearest whole dollar or to the nearest cent when disclosing them on the periodic statement. Currently, paragraph (f) of Appendix M1 references rounding disclosures to the nearest whole dollar when calculating the total savings estimate for repayment in 36 months. Specifically, paragraph (f) of Appendix M1 states that when calculating the savings estimate for repayment in 36 months, a card issuer must subtract the total cost estimate for repayment in 36 months calculated under paragraph (e) of Appendix M1 (rounded to the nearest whole dollar as set forth in § 226.7(b)(12)(i)(F)(1)(iii)) from the minimum payment total cost estimate calculated under paragraph (c) of Appendix M1 (rounded to the nearest whole dollar as set forth in § 226.7(b)(12)(i)(C)).

Consistent with the proposed changes to § 226.7(b)(12), in the November 2010 Proposed Rule, the Board proposed to revise paragraph (f) of Appendix M1 to indicate that a card issuer, at its option, may round the disclosures either to the nearest whole dollar or to the nearest cent in calculating the savings estimate for repayment in 36 months. Under the proposal, if a card issuer chose under § 226.7(b)(12) to round the disclosures to the nearest whole dollar, the card issuer would have been required to calculate the savings estimate for repayment in 36 months by subtracting the total cost estimate for repayment in 36 months calculated under paragraph (e) of Appendix M1 (rounded to the nearest whole dollar) from the minimum payment total cost estimate calculated under paragraph (c) of Appendix M1 (rounded to the nearest whole dollar). If a card issuer chose, however, to round the disclosures to the nearest cent, the card issuer would have been required to calculate the savings estimate for repayment in 36 months by subtracting the total cost estimate for repayment in 36 months calculated under paragraph (e) of Appendix M1 (rounded to the nearest cent) from the minimum payment total cost estimate calculated under paragraph (c) of Appendix M1 (rounded to the nearest cent). The Board believed that this would ensure that the savings estimate for repayment in 36 months would be calculated consistent with how the other disclosures would be shown on the periodic statement.

The Board received several comments supporting the proposed changes to Appendix M1, and no comments opposing them. For the reasons discussed above, the Board adopts these changes as proposed.

#### IV. Mandatory Compliance Dates

*A. Mandatory compliance date.* Consistent with TILA Section 105(d), this final rule is effective and compliance is mandatory on October 1, 2011. However, creditors may, at their option, comply with this rule prior to that date.

Most commenters requested an October 1, 2011 effective date. Although some industry commenters requested additional time to comply, the Board believes that, given the largely technical nature of this final rule, an October 1, 2011 effective date provides creditors with sufficient time to bring their systems and practices into compliance.

*B. Prospective application.* This final rule is prospective in application. The following paragraphs set forth additional guidance and examples as to how a creditor must comply with the final rule by the mandatory compliance date. Except as otherwise stated, the final rule applies to existing as well as new accounts and balances.

*C. Tabular summaries that accompany applications or solicitations (§ 226.5a).* Credit and charge card applications provided or made available to consumers on or after October 1, 2011 must comply with the final rule, including format and terminology requirements. For example, if a direct-mail application or solicitation is mailed to a consumer on September 30, 2011, it is not required to comply with the new requirements, even if the consumer does not receive it until October 7, 2011. In contrast, a direct-mail application or solicitation that is mailed to consumers on or after October 1, 2011 must comply with the final rule. If a creditor makes an application or solicitation available to the general public (such as “take-one” applications), any new applications or solicitations issued by the creditor on or after October 1, 2011 must comply with the new rule. However, if a creditor issues an application or solicitation by making it available to the public prior to October 1, 2011 (for example, by restocking an in-store display of “take-one” applications on September 15, 2011), those applications need not comply with the new rule, even if a consumer may pick up one of the applications from the display after October 1, 2011. Any “take-one” applications that the creditor uses to restock the display on or after October 1, 2011, however, must comply with the final rule.

*D. Account-opening disclosures (§ 226.6).* Account-opening disclosures furnished on or after October 1, 2011 must comply with the final rule,

including format and terminology requirements. The relevant date for purposes of this requirement is the date on which the disclosures are furnished, not when the consumer applies for the account. For example, if a consumer applies for an account on September 30, 2011 but the account-opening disclosures are not mailed until October 2, 2011, those disclosures must comply with the final rule. In addition, if the disclosures are furnished by mail, the relevant date is the day on which the disclosures were sent, not the day on which the consumer receives the disclosures. Thus, if a creditor mails the account-opening disclosures on September 30, 2011, the disclosures are not required to comply with the final rule, even if the consumer receives those disclosures on October 7, 2011.

*E. Periodic statements (§§ 226.5(b)(2) and 226.7).* Periodic statements mailed or delivered on or after October 1, 2011 must comply with §§ 226.5(b)(2) and 226.7, as revised by the final rule. For example, if a creditor mails a periodic statement to the consumer on September 30, 2011, that statement is not required to comply with the final rule, even if the consumer does not receive the statement until October 7, 2011. However, a statement mailed on October 1, 2011 must comply with the final rule.

*F. Checks that access a credit card account (§ 226.9(b)).* A creditor must comply with the disclosure requirements of § 226.9(b)(3) (as revised by the final rule) for checks that access a credit account that are provided on or after October 1, 2011. Thus, for example, if a creditor mails access checks to a consumer on September 30, 2011, these checks are not required to comply with new § 226.9(b)(3), even if the consumer receives them on October 7, 2011. However, checks mailed on October 1, 2011 must comply with the final rule.

*G. Notices of changes in terms and penalty rate increases (§ 226.9(c)(2)).*

*In general.* The relevant date for determining whether a change-in-terms notice must comply with the new requirements of revised § 226.9(c)(2) is the date on which the notice is provided, not the effective date of the change. Thus, the requirements of the final rule apply to notices mailed or delivered on or after October 1, 2011. For example, if a creditor provides a notice on September 30, 2011, the notice is not required to comply with new § 226.9(c)(2), even if the consumer receives the notice on October 7, 2011 and the change disclosed in the notice is effective on November 15, 2011.



*Promotional fees.* The final rule applies the existing requirements for promotional rate programs in § 226.9(c)(2)(v)(B) to promotional programs under which a fee will increase after a specified period of time. Some creditors may have outstanding promotional fee programs that were in place before the effective date of this final rule, but under which the promotional fee will not expire until after October 1, 2011. For example, on January 1, 2010, a creditor may have opened an account with annual fee of \$0 for the first year and a \$50 annual fee thereafter. These creditors may have concerns about whether the disclosures that they have provided to consumers regarding these promotional programs are sufficient to qualify for the exception in revised § 226.9(c)(2)(v)(B). In order to address these concerns, the Board is providing the following guidance, which is modeled after the guidance provided with respect to promotional rates in the July 2009 Interim Final Rule and the February 2010 Final Rule. See 74 FR 36091–36092; 75 FR 7783–7784.

The Board notes that, as revised by this final rule, § 226.9(c)(2)(v)(B) requires written disclosures of the term of the promotional fee and the fee that will apply when the promotional fee expires. The final rule further requires that the term of the promotional fee and the fee that will apply when the promotional fee expires be disclosed in close proximity and equally prominent to the disclosure of the promotional fee. The Board anticipates that many creditors offering such a promotional fee program may already have complied with these advance notice requirements in connection with offering the promotional program.

The Board is nonetheless aware that some other creditors may be uncertain as to whether written disclosures provided at the time an existing promotional fee program was offered are sufficient to comply with the exception in § 226.9(c)(2)(v)(B). For example, for promotional fee offers provided after October 1, 2011, the disclosure under § 226.9(c)(2)(v)(B)(1) must include the fee that will apply after the expiration of the promotional period. For an existing promotional fee program, a creditor might instead have disclosed this fee narratively—for example, by stating that the annual fee would be reduced to \$0 for one year and that the “standard” or “pre-existing” annual fee would apply thereafter. The Board does not believe that it is appropriate to require a creditor to provide 45 days’ advance notice before expiration of the promotional period when the creditor

provided disclosures that were generally consistent with § 226.9(c)(2)(v)(B) but were not technically compliant because they described the post-promotional fee narratively. This would have the impact of imposing the requirements of this final rule retroactively, to disclosures given prior to the October 1, 2011 effective date. Therefore, a creditor that made disclosures prior to October 1, 2011 that generally complied with § 226.9(c)(2)(v)(B) but that described the type of post-promotional fee rather than disclosing the actual fee is not required to provide an additional notice pursuant to § 226.9(c)(2) before expiration of the promotional fee in order to use the exception.

Similarly, the Board acknowledges that there may be some creditors with outstanding promotional fee programs that did not make—or, without conducting extensive research, are not aware if they made—written disclosures of the length of the promotional period and the post-promotional fee. For example, some creditors may have made these disclosures orally. For the same reasons described in the foregoing paragraph, the Board believes that it would be inappropriate to preclude use of the § 226.9(c)(2)(v)(B) exception by creditors offering these promotional fee programs. That interpretation of the rule would in effect require creditors to comply with the precise requirements of the exception before issuance of this final rule or its October 1, 2011 effective date.

However, the Board believes at the same time that it would be inconsistent with the final rule for creditors that provided no advance notice of the term of the promotion and the post-promotional fee to receive an exemption from the general notice requirements of § 229.9(c)(2). Consequently, any creditor that, prior to October 1, 2011, provides a written disclosure to consumers subject to an existing promotional fee program stating the length of the promotional period and the fee that will apply after the promotional fee expires is not required to provide an additional notice pursuant to § 226.9(c)(2) prior to applying the post-promotional fee. In addition, any creditor that provided, prior to October 1, 2011, oral disclosures of the length of the promotional period and the fee that will apply after the promotional period also need not provide an additional notice under § 226.9(c)(2). However, any creditor subject to § 226.9(c)(2) that has not provided advance notice of the term of a promotion and the fee that will apply upon expiration of that promotion in the manner described above prior to October 1, 2011 will be required to

provide 45 days’ advance notice containing the content set forth in this final rule before raising the fee.

H. *Advertising rules (§ 226.16).* Advertisements occurring on or after October 1, 2011, such as an advertisement broadcast on the radio, published in a newspaper, or mailed on October 1, 2011 or later, must comply with revised § 226.16.

I. *Ability to pay rules (§ 226.51).* The revisions to § 226.51 apply to the opening of new accounts on or after October 1, 2011 as well as to credit line increases on existing accounts on or after October 1, 2011. However, consistent with the February 2010 Final Rule, revised § 226.51 does not apply to accounts opened in response to firm offers of credit made consistent with the Fair Credit Reporting Act before October 1, 2011, provided that the income requirements established by the creditor as specific criteria prior to prescreening were consistent with the version of § 226.51 in effect at that time. See 75 FR 7785; see also 15 U.S.C. 1681(l)(1)(A).

In addition, if an application is required to comply with the revised disclosure requirements in § 226.5a (as discussed above), the application must also request income information in a manner consistent with revised § 226.51 if the card issuer intends to rely on the information to comply with § 226.51. For example, if direct-mail applications requesting that consumers age 21 or older provide their “household income” are mailed to consumers on September 30, 2011, the card issuer may rely on the income information provided by consumers on the applications for purposes of § 226.51, even if the applications were not received by consumers until October 7, 2011. However, if the same applications are mailed to consumers on or after October 1, 2011, the card issuer cannot rely solely on the income information provided by consumers on the applications.

Similarly, if a card issuer makes applications available to the general public (such as “take-one” applications), any new applications issued by the card issuer on or after October 1, 2011 must request income information in a manner consistent with revised § 226.51 if the card issuer intends to rely on the information to comply with § 226.51. For example, if a card issuer restocks an in-store display of “take-one” applications requesting that consumers age 21 or older provide their “household income” on September 15, 2011, the card issuer may rely on the income information provided by consumers on the applications for purposes of § 226.51, even though a consumer may

pick up one of the applications from the display after October 1, 2011. However, any “take-one” applications that the card issuer uses to restock the display on or after October 1, 2011 must request income information in a manner consistent with revised § 226.51 if the card issuer intends to rely on the information to comply with § 226.51.

*J. Limitations on fees (§ 226.52).*

*Limitations on fees imposed prior to or during first year (§ 226.52(a)).* The revisions to § 226.52(a) are effective on October 1, 2011. Accordingly, the revised limitations on the imposition of fees in § 226.52(a) apply to accounts opened and fees imposed on or after October 1, 2011. However, revised § 226.52(a) does not require card issuers to waive or rebate fees imposed prior to October 1, 2011. For example, assume that a card issuer imposes a \$50 application fee on August 1, 2011, the account is opened on August 2 with a \$400 credit limit, and \$100 in account-opening fees are imposed on August 3. Revised § 226.52(a) does not require the card issuer to waive or rebate \$50 in fees on October 1, 2011. However, beginning on October 1, 2011, revised § 226.52(a) prohibits the card issuer from imposing any additional non-exempt fees with respect to the account until August 2, 2012.

The revised definition of account opening in § 226.52(a) applies only to accounts opened on or after October 1, 2011. Because many card issuers currently track only the date that accounts are opened on their systems, it would be difficult for card issuers to determine the account-opening date consistent with revised § 226.52(a) for accounts opened prior to October 1.

*Limitations on penalty fees*

*(§ 226.52(b)).* The revisions to § 226.52(b) are effective on October 1, 2011. However, the final rule does not require card issuers to waive or rebate fees imposed prior to October 1, 2011. For example, assume that a card issuer does not impose a late payment fee when a consumer pays late in August 2011, but imposes a \$35 late payment when the consumer pays late in September 2011. Revised § 226.52(b)(1)(ii)(B) does not require the issuer to waive or rebate \$10 on October 1, 2011, nor does it prevent the card issuer from imposing a \$35 fee if the consumer pays late again in November 2011.

*K. Limitations on increasing annual percentage rates, fees, and charges (§ 226.55).* The revisions to § 226.55 are effective on October 1, 2011.

*Temporary fees (§ 226.55(b)(1)).* See the transition guidance provided above regarding § 226.9(c)(2)(v)(B) for

guidance regarding application of the disclosure requirements in § 226.55(b)(1)(i) to promotional fee programs established prior to October 1, 2011. The requirement in § 226.55(b)(1) that temporary fees expire after a period of no less than six months applies to temporary fees offered on or after October 1, 2011. Thus, for example, if a card issuer offered a temporary fee on September 1, 2011 that applied until January 1, 2012, § 226.55(b)(1) would not prohibit the card issuer from applying an increased fee on January 1 so long as the card issuer previously disclosed the period during which the temporary fee would apply and the increased fee that would apply thereafter.

*Increases in rates and certain fees and charges that apply to new transactions (§ 226.55(b)(3)); treatment of protected balances (§ 226.55(c)).* The revisions to § 226.55(b)(3)(iii) regarding the circumstances under which an increased fee or charge that is subject to § 226.55 applies to an existing balance (as opposed to the account as a whole) apply to any increase in a fee or charge on or after October 1, 2011. However, a card issuer is not required to waive, rebate, or reduce any fee or charge imposed consistent with Regulation Z prior to October 1, 2011. Furthermore, as discussed above with respect to § 226.52(a), the revised definition of account opening under § 226.55(b)(3)(iii) applies only to accounts opened on or after October 1, 2011.

*Promotional waivers or rebates of interest, fees, and charges (§ 226.55(e)).* New § 226.55(e) applies to any waiver or rebate of interest, fees, or charges subject to § 226.55 that is promoted by a card issuer and applied to an account on or after October 1, 2011. If a card issuer waives or rebates interest, fees, or charges subject to § 226.55 prior to October 1, 2011, § 226.55(e) does not prohibit the issuer from ceasing to waive or rebate such interest, fees, or charges on or after October 1 unless the card issuer promotes the waiver or rebate on or after October 1.

*L. Internet posting of credit card agreements (§ 226.58).* Because the final rule becomes effective on October 1, 2011, the submissions that issuers must send to the Board by May 2, 2011 (reflecting agreements offered to the public as of the end of the first calendar quarter, March 31, 2011) and by August 1, 2011 (reflecting agreements offered to the public as of the end of the second calendar quarter, June 30, 2011) are not subject to the final rule. Compliance with the final rule is required for submissions that issuers must send to

the Board by October 31, 2011 (reflecting agreements offered as of the end of the third calendar quarter, September 30, 2011) and to subsequent submissions.

## V. Regulatory Analysis

This final rule clarifies aspects of the Board's February and June 2010 Final Rules implementing the Credit Card Act. Section VI of the supplementary information to the February 2010 Final Rule and section VII of the supplementary information to the June 2010 Final Rule set forth the Board's analyses and determinations under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA) with respect to those rules. *See* 75 FR 7789–7791, 75 FR 37565–37567. In addition, section VII of the supplementary information to the February 2010 Final Rule and section VIII of the supplementary information to the June 2010 Final Rule set forth the Board's analyses and determinations under the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3506; 5 CFR Part 1320 Appendix A.1) with respect to those rules. *See* 75 FR 7791, 75 FR 37567–37568. Because the final rule's amendments are clarifications and do not alter the substance of these analyses and determinations, the Board continues to rely on those analyses and determinations for purposes of this rulemaking.<sup>27</sup>

*RFA.* The Small Business Administration's Office of Advocacy (SBA) submitted a comment on the initial regulatory flexibility analysis (IRFA) in the Board's proposed rule. Otherwise, the Board did not receive substantive comments specifically addressing this analysis. Section 1601 of the Small Business Jobs Act of 2010 and Executive Order 13272 generally require Federal agencies to respond in a final rule to written comments submitted by the SBA on a proposed rule, unless the public interest is not served by doing so. The Board's response to the SBA's comment letter is set forth below.

The SBA expressed concern that the Board's IRFA did not adequately assess the impact of the proposed rule on small entities. The SBA encouraged the Board

<sup>27</sup> In the proposal, the Board noted that the amendments to § 226.9(c)(2)(v)(B) permit a card issuer to provide the consumer in advance with certain written disclosures of a fee increase upon expiration of a specified period of time, without providing 45 days' advance notice pursuant to § 226.9(c)(2). The Board anticipated that the proposed rule would impose no additional burden on card issuers that are small entities because the clarification provides an alternative means of complying with disclosures that are otherwise required by § 226.9(c)(2). The Board did not receive any significant comment on this preliminary determination, which is adopted in this final rule.

to issue a second IRFA to determine the impact on small entities and to consider alternatives that meet the Board's objectives while minimizing the impact on small entities. For the reasons stated below, the Board believes the analysis in its IRFA complied with the requirements of the RFA. Accordingly, the Board is proceeding with a final rule.

This rulemaking is part of a series of rules that have extensively revised and expanded the regulatory requirements for entities that offer open-end (not home-secured) consumer credit, particularly credit card accounts. In January 2009, the Board adopted a final rule that comprehensively amended the requirements of Regulation Z that apply to credit card accounts and other open-end (not home-secured) consumer credit. *See* 74 FR 5244 (Jan. 29, 2009). In that rule, the Board performed a RFA analysis and determined that the amendments would have a significant economic impact on a substantial number of small entities. *See id.* at 5390–5392.

In May 2009, the Credit Card Accountability, Responsibility, and Disclosure Act of 2009 (Credit Card Act) was signed into law, which required the Board to extensively revise the January 2009 final rule and to issue three stages of additional rules. *See* Pub. L. No. 111–24, 123 Stat. 1734 (2009); *see also* 75 FR 37526 (describing rulemaking requirements of the Credit Card Act). Consistent with the requirements of the Credit Card Act, the Board issued an interim final rule in July 2009 and final rules in February and June 2010. *See* 74 FR 36077 (July 22, 2009); 75 FR 7658 (Feb. 22, 2010); 75 FR 37526 (June 29, 2010). In each of these rules, the Board conducted an RFA analysis and determined that the amendments to Regulation Z would have a significant economic impact on a substantial number of small entities, relying in part on the RFA analyses and determinations in the Board's prior credit card rules. *See* 74 FR 36092–36093; 75 FR 7789–7791; 75 FR 37565–37567. These analyses and determinations were not challenged by the SBA or other commenters.

Most recently, the Board issued a proposed rule in November 2010 to clarify aspects of the February and June 2010 credit card rules in order to facilitate compliance. *See* 75 FR 67459 (Nov. 2, 2010). In that proposal, the Board stated that it would continue to rely on the RFA analyses and determinations in its prior credit card rulemakings because the proposed clarifications would not, if adopted,

alter the substance of those analyses and determinations. *See id.* 67486.

The SBA suggested in its comment letter that the Board's reliance on the RFA analyses and determinations in prior credit card rulemakings was not appropriate. However, the RFA specifically provides that, “[i]n order to avoid duplicative action, an agency may consider a series of closely related rules as one rule for the purposes of [the RFA analysis].” 5 U.S.C. 605(c). Thus, the Board has met or exceeded the requirements of the RFA by performing separate analyses for each of the credit card rulemakings preceding the November 2010 proposed clarifications.

The SBA also commented that the Board failed to consider updated information about the number of small entities that may be impacted by the proposed clarifications. Although the total number of small entities likely to be affected by the Board's regulations is unknown because the open-end credit provisions of Regulation Z have broad applicability to individuals and businesses that extend even small amounts of consumer credit, the Board estimated in prior rulemakings that, based on data from Reports of Condition and Income (call reports), there were approximately 4,100 card issuers with assets of \$175 million or less. *See* 74 FR 5391 (citing June 2008 call report data). Based on the most recent final call report data (from September 2010), the Board estimates that there are approximately 3,700 such issuers. Notwithstanding this reduction in the number of affected small entities, the Board continues to believe that its credit card regulations (including this final rule) will have a significant economic impact on a substantial number of small entities.

Finally, the SBA suggested that the Board did not sufficiently address alternatives to the proposed rule which would minimize the impact on small entities. However, the Board solicited comment on alternatives to several of the proposed requirements. *See, e.g.,* 75 FR 67474. Furthermore, as discussed above in III. Section-by-Section Analysis, the Board has provided specific model language and transition guidance based on the comments in order to ease compliance and operational burden on small entities.

*PRA.* The Board has a continuing interest in the public's opinion of the collection of information. Comments on the collection of information should be sent to Cynthia Ayouch, Acting Federal Reserve Board Clearance Officer, Division of Research and Statistics, Mail Stop 95–A, Board of Governors of the Federal Reserve System, Washington,

DC 20551, with copies of such comments sent to the Office of Management and Budget, Paperwork Reduction Project (7100–0199), Washington, DC 20503.

## VI. List of Revisions to Official Staff Interpretations

For clarity, the following is a list of revisions made by this final rule to the Official Staff Interpretations:

*Section 226.2—Definitions and Rules of Construction, 2(a)(15) Credit card:* Paragraphs 2. and 3. are revised and paragraph 4. is added.

*Section 226.5—General Disclosure Requirements, 5(b)(2) Periodic statements:*

(1) *Paragraph 5(b)(2)(ii):* Paragraphs 1. through 4. are revised; and

(2) The heading *Paragraph 5(b)(2)(iii)* and paragraph 1. under that heading are deleted.

*Section 226.5a—Credit and Charge Card Applications and Solicitations, 5a(b) Required disclosures:*

(1) *5a(b)(1) Annual percentage rate:* Paragraph 5. is revised;

(2) *5a(b)(2) Fees for issuance or availability:* paragraph 4. is revised;

(3) *5a(b)(5) Grace period:* Paragraph 1. is revised and paragraph 4. is deleted; and

(4) *5a(b)(6) Balance computation method:* Paragraph 1. is revised.

*Section 226.6—Account-Opening Disclosures, 6(b) Rules affecting open-end (not home-secured) plans, 6(b)(2) Required disclosures for account-opening table for open-end (not home-secured) plans:*

(1) *6(b)(2)(v) Grace period:* Paragraphs 1. and 3. are revised and paragraph 4. is deleted; and

(2) *6(b)(2)(vi) Balance computation method:* Paragraph 1. is revised and paragraph 2. is added.

*Section 226.7—Periodic Statement, 7(b) Rules affecting open-end (not home-secured) plans:*

(1) Paragraph 1. is revised;

(2) *7(b)(5) Balance on which finance charge computed:* Paragraphs 7. and 8. are revised;

(3) *7(b)(6) Charges imposed:* Paragraph 3. is revised;

(4) *7(b)(8) Grace period:* Paragraph 3. is revised; and

(5) *7(b)(12) Repayment disclosures:* Paragraph 1. is added.

*Section 226.9—Subsequent Disclosure Requirements:*

(1) *9(b) Disclosures for supplemental credit access devices and additional features, 9(b)(3) Checks that access a credit card account:*

(i) *9(b)(3)(i) Disclosures:* Paragraph 2. is added; and

(ii) *9(b)(3)(i)(D):* Paragraph 1. is revised;

(2) *9(c) Change in terms, 9(c)(2) Rules affecting open-end (not home-secured) plans:*

- (i) Paragraph 1. is revised;
- (ii) *9(c)(2)(iii) Charges not covered by § 226.6(b)(1) and (b)(2):* Paragraph 1. is revised;
- (iii) *9(c)(2)(iv) Disclosure requirements:* Paragraphs 3. and 4. are revised;
- (iv) *9(c)(2)(v) Notice not required:* Paragraphs 2., 3., 4., 5., 6., 7., 10., 11., and 12. are revised and paragraph 13. is added; and
- (v) *9(e) Disclosures upon renewal of credit or charge card:* Paragraph 10. is revised.

Section 226.10—Payments:

- (1) *10(b) Specific requirements for payments:* Paragraph 2. is revised;
- (2) *10(e) Limitations on fees related to method of payment:* Paragraph 4. is added; and
- (3) *10(f) Changes by card issuer:* Paragraph 3. is revised.

Section 226.12—*Special Credit Card Provisions, 12(c) Right of cardholder to assert claims or defenses against card issuer:* Paragraph 4. is revised.

Section 226.13—*Billing Error Resolution, 13(c) Time for resolution; general procedures, Paragraph 13(c)(2):* Paragraph 2. is revised.

Section 226.14—*Determination of Annual Percentage Rate, 14(a) General rule:* Paragraph 6. is added.

Section 226.16—*Advertising:*

- (1) Paragraphs 1. and 2. are revised; and

- (2) *16(g) Promotional rates:* Paragraphs 2., 3., and 4. are revised.

Section 226.30—*Limitation on Rates:* Paragraph 8. is revised.

Section 226.51—*Ability to Pay:*

- (1) *51(a) General rule, 51(a)(1) Consideration of ability to pay:* Paragraphs 1., 2., 4. and 6. are revised;
- (2) *51(a)(2) Minimum periodic payments:* Paragraph 3. is revised; and
- (3) *51(b) Rules affecting young consumers, 51(b)(1) Applications from young consumers:* Paragraph 2. is revised.

Section 226.52—*Limitations on Fees:* (1) *52(a) Limitations during first year after account opening:*

- (i) The subheading *52(a) Limitations during first year after account opening* is revised to read *52(a) Limitations prior to account opening and during first year after account opening;*

- (ii) *52(a)(1) General rule:* Paragraphs 1., 2., and 3. are revised and paragraph 4. is added; and

- (iii) *52(a)(2) Fees not subject to limitations:* Paragraph 1. is revised;

(2) *52(b) Limitations on penalty fees:*

- (i) *52(b)(1)(ii) Safe harbors:* Paragraph 1. is revised; and

(ii) *52(b)(2) Prohibited fees:*

(A) *52(b)(2)(i) Fees that exceed dollar amount associated with violation:*

- paragraph 5. is revised; and
- (B) *52(b)(2)(ii) Multiple fees based on single event or transaction:* Paragraph 1. is revised.

Section 226.53—*Allocation of Payments:*

- (1) Paragraphs 4. and 5. are revised; and

(2) The subheading *53(b) Special rule for accounts with balances subject to deferred interest or similar programs* is revised to read *53(b) Special rules and, under that subheading, paragraphs 1., 2., and 3. are revised.*

Section 226.55—*Limitations on Increasing Annual Percentage Rates, Fees, and Charges:*

- (1) *55(a) General rule:* Paragraph 1. is revised;

- (2) *55(b) Exceptions:* Paragraphs 1. and 3. are revised;

(3) The subheading *55(b)(1) Temporary rate exception* is revised to read *55(b)(1) Temporary rate, fee, or charge exception* and, under that subheading, paragraphs 2. and 4. are revised and paragraph 5. is added;

(4) *55(b)(3) Advance notice exception:* Paragraphs 6. and 7. are added;

(5) *55(b)(6) Servicemembers Civil Relief Act exception:* Paragraphs 1. and 2. are revised and paragraph 3. is added;

(6) *55(c) Treatment of protected balances, 55(c)(1) Definition of protected balance:* Paragraph 3. is revised and paragraph 4. is added; and

(7) The subheading *55(e) Promotional waivers or rebates of interest, fees, and other charges* is added and, under that subheading, paragraphs 1., 2., and 3. are added.

Section 226.58—*Internet Posting of Credit Card Agreements:*

(1) *58(b) Definitions:*

(i) *58(b)(1) Agreement:* Paragraph 1. is revised;

(ii) *58(b)(2) Amends:* Paragraph 1. is revised;

(iii) The subheading *58(b)(4) Card issuer* is added and paragraphs 1., 2., and 3. are added under that subheading;

(iv) The subheading *58(b)(4) Offers* is revised to read *58(b)(5) Offers;*

(v) The subheading *58(b)(5) Open account* is revised to read *58(b)(6) Open account;* and

(vi) The subheading *58(b)(7) Private label credit card account and private label credit card plan* is revised to read *58(b)(8) Private label credit card account and private label credit card plan* and, under that subheading, paragraphs 2. and 4. are revised;

(2) *58(c) Submission of agreements to Board, 58(c)(3) Amended agreements:* Paragraph 2. is revised, paragraph 3. is

renumbered as paragraph 4., and a new paragraph 3. is added;

(3) *58(d) Posting of agreements offered to the public:* Paragraph 2. is revised; and

(4) *58(e) Agreements for all open accounts:* Paragraph 3. is revised.

Section 226.59—*Reevaluation of Rate Increases:*

(1) *59(a) General rule, 59(a)(1) Evaluation of increased rate:* Paragraphs 3. and 4. are renumbered as paragraphs 4. and 5. and a new paragraph 3. is added;

(2) *59(d) Factors:* Paragraph 6. is added; and

(3) *59(f) Termination of obligation to review factors:* Paragraph 2. is added.

#### List of Subjects in 12 CFR Part 226

Advertising, Consumer protection, Federal Reserve System, Reporting and recordkeeping requirements, Truth in Lending.

#### Authority and Issuance

For the reasons set forth in the preamble, the Board amends Regulation Z, 12 CFR part 226, as set forth below:

#### PART 226—TRUTH IN LENDING (REGULATION Z)

- 1. The authority citation for part 226 continues to read as follows:

**Authority:** 12 U.S.C. 3806; 15 U.S.C. 1604, 1637(c)(5), and 1639(l); Pub. L. No. 111–24 § 2, 123 Stat. 1734; Pub. L. No. 111–203, 124 Stat. 1376.

#### Subpart B—Open-End Credit

- 2. Section 226.2(a)(15)(ii) is revised to read as follows:

#### § 226.2 Definitions and rules of construction.

(a) \* \* \*

(15) \* \* \*

(ii) *Credit card account under an open-end (not home-secured) consumer credit plan* means any open-end credit account that is accessed by a credit card, except:

(A) A home-equity plan subject to the requirements of § 226.5b that is accessed by a credit card; or

(B) An overdraft line of credit that is accessed by a debit card or an account number.

\* \* \* \* \*

- 3. Section 226.5 is amended by revising the heading for paragraph (b)(2)(ii)(A) and revising paragraph (b)(2)(ii)(B) to read as follows:

#### § 226.5 General disclosure requirements.

\* \* \* \* \*

(b) \* \* \*

(2) \* \* \*  
(ii) \* \* \*

(A) *Credit card accounts under an open-end (not home-secured) consumer credit plan.* \* \* \*

\* \* \* \* \*

(B) *Open-end consumer credit plans.* For accounts under an open-end consumer credit plan, a creditor must adopt reasonable procedures designed to ensure that:

(1) If a grace period applies to the account:

(i) Periodic statements are mailed or delivered at least 21 days prior to the date on which the grace period expires; and

(ii) The creditor does not impose finance charges as a result of the loss of the grace period if a payment that satisfies the terms of the grace period is received by the creditor within 21 days after mailing or delivery of the periodic statement.

(2) Regardless of whether a grace period applies to the account:

(i) Periodic statements are mailed or delivered at least 14 days prior to the date on which the required minimum periodic payment must be received in order to avoid being treated as late for any purpose; and

(ii) The creditor does not treat as late for any purpose a required minimum periodic payment received by the creditor within 14 days after mailing or delivery of the periodic statement.

(3) For purposes of paragraph (b)(2)(ii)(B) of this section, "grace period" means a period within which any credit extended may be repaid without incurring a finance charge due to a periodic interest rate.<sup>10</sup>

\* \* \* \* \*

■ 4. Section 226.5a is amended by revising paragraphs (a)(2)(iii), (b)(1)(i), and (b)(1)(iv) to read as follows:

**§ 226.5a Credit and charge card applications and solicitations.**

(a) \* \* \*  
(2) \* \* \*

(iii) Disclosures required by paragraphs (b)(1)(iv)(B), (b)(1)(iv)(C) and (b)(6) of this section must be placed directly beneath the table.

\* \* \* \* \*

(b) \* \* \*  
(1) \* \* \*

(i) *Variable rate information.* If a rate disclosed under paragraph (b)(1) of this section is a variable rate, the card issuer shall also disclose the fact that the rate may vary and how the rate is determined. In describing how the applicable rate will be determined, the

card issuer must identify the type of index or formula that is used in setting the rate. The value of the index and the amount of the margin that are used to calculate the variable rate shall not be disclosed in the table. A disclosure of any applicable limitations on rate increases shall not be included in the table.

\* \* \* \* \*

(iv) *Penalty rates.* (A) *In general.* Except as provided in paragraph (b)(1)(iv)(B) and (C) of this section, if a rate may increase as a penalty for one or more events specified in the account agreement, such as a late payment or an extension of credit that exceeds the credit limit, the card issuer must disclose pursuant to this paragraph (b)(1) the increased rate that may apply, a brief description of the event or events that may result in the increased rate, and a brief description of how long the increased rate will remain in effect.

(B) *Introductory rates.* If the issuer discloses an introductory rate, as that term is defined in § 226.16(g)(2)(ii), in the table or in any written or electronic promotional materials accompanying applications or solicitations subject to paragraph (c) or (e) of this section, the issuer must briefly disclose directly beneath the table the circumstances, if any, under which the introductory rate may be revoked, and the type of rate that will apply after the introductory rate is revoked.

(C) *Employee preferential rates.* If a card issuer discloses in the table a preferential annual percentage rate for which only employees of the card issuer, employees of a third party, or other individuals with similar affiliations with the card issuer or third party, such as executive officers, directors, or principal shareholders are eligible, the card issuer must briefly disclose directly beneath the table the circumstances under which such preferential rate may be revoked, and the rate that will apply after such preferential rate is revoked.

\* \* \* \* \*

■ 5. Section 226.6 is amended by revising paragraphs (b)(1)(ii), (b)(2)(i)(B), and (b)(2)(i)(D) to read as follows:

**§ 226.6 Account-opening disclosures.**

\* \* \* \* \*

(b) \* \* \*  
(1) \* \* \*

(ii) *Location.* Only the information required or permitted by paragraphs (b)(2)(i) through (v) (except for (b)(2)(i)(D)(2) and (b)(2)(vii) through (xiv) of this section shall be in the table. Disclosures required by paragraphs (b)(2)(i)(D)(2), (b)(2)(i)(D)(3), (b)(2)(vi),

and (b)(2)(xv) of this section shall be placed directly below the table. Disclosures required by paragraphs (b)(3) through (5) of this section that are not otherwise required to be in the table and other information may be presented with the account agreement or account-opening disclosure statement, provided such information appears outside the required table.

\* \* \* \* \*

(2) \* \* \*  
(i) \* \* \*

(B) *Discounted initial rates.* If the initial rate is an introductory rate, as that term is defined in § 226.16(g)(2)(ii), the creditor must disclose the rate that would otherwise apply to the account pursuant to paragraph (b)(2)(i) of this section. Where the rate is not tied to an index or formula, the creditor must disclose the rate that will apply after the introductory rate expires. In a variable-rate account, the creditor must disclose a rate based on the applicable index or formula in accordance with the accuracy requirements of paragraph (b)(4)(ii)(G) of this section. Except as provided in paragraph (b)(2)(i)(F) of this section, the creditor is not required to, but may disclose in the table the introductory rate along with the rate that would otherwise apply to the account if the creditor also discloses the time period during which the introductory rate will remain in effect, and uses the term "introductory" or "intro" in immediate proximity to the introductory rate.

\* \* \* \* \*

(D) *Penalty rates.* (1) *In general.* Except as provided in paragraph (b)(2)(i)(D)(2) and (b)(2)(i)(D)(3) of this section, if a rate may increase as a penalty for one or more events specified in the account agreement, such as a late payment or an extension of credit that exceeds the credit limit, the creditor must disclose pursuant to paragraph (b)(2)(i) of this section the increased rate that may apply, a brief description of the event or events that may result in the increased rate, and a brief description of how long the increased rate will remain in effect. If more than one penalty rate may apply, the creditor at its option may disclose the highest rate that could apply, instead of disclosing the specific rates or the range of rates that could apply.

(2) *Introductory rates.* If the creditor discloses in the table an introductory rate, as that term is defined in § 226.16(g)(2)(ii), creditors must briefly disclose directly beneath the table the circumstances under which the introductory rate may be revoked, and

<sup>10</sup> [Reserved]

the rate that will apply after the introductory rate is revoked.

(3) *Employee preferential rates.* If a creditor discloses in the table a preferential annual percentage rate for which only employees of the creditor, employees of a third party, or other individuals with similar affiliations with the creditor or third party, such as executive officers, directors, or principal shareholders are eligible, the creditor must briefly disclose directly beneath the table the circumstances under which such preferential rate may be revoked, and the rate that will apply after such preferential rate is revoked.

\* \* \* \* \*

■ 6. Section 226.7 is amended by revising paragraphs (b)(12) and (b)(14) to read as follows:

§ 226.7 Periodic statement.

\* \* \* \* \*

(b) \* \* \*

(12) *Repayment disclosures.* (i) *In general.* Except as provided in paragraphs (b)(12)(ii) and (b)(12)(v) of this section, for a credit card account under an open-end (not home-secured) consumer credit plan, a card issuer must provide the following disclosures on each periodic statement:

(A) The following statement with a bold heading: “Minimum Payment Warning: If you make only the minimum payment each period, you will pay more in interest and it will take you longer to pay off your balance;”

(B) The minimum payment repayment estimate, as described in Appendix M1 to this part. If the minimum payment repayment estimate is less than 2 years, the card issuer must disclose the estimate in months. Otherwise, the estimate must be disclosed in years and rounded to the nearest whole year;

(C) The minimum payment total cost estimate, as described in Appendix M1 to this part. The minimum payment total cost estimate must be rounded either to the nearest whole dollar or to the nearest cent, at the card issuer’s option;

(D) A statement that the minimum payment repayment estimate and the minimum payment total cost estimate are based on the current outstanding balance shown on the periodic statement. A statement that the minimum payment repayment estimate and the minimum payment total cost estimate are based on the assumption that only minimum payments are made and no other amounts are added to the balance;

(E) A toll-free telephone number where the consumer may obtain from the card issuer information about credit

counseling services consistent with paragraph (b)(12)(iv) of this section; and (F)(1) Except as provided in paragraph (b)(12)(i)(F)(2) of this section, the following disclosures:

(i) The estimated monthly payment for repayment in 36 months, as described in Appendix M1 to this part. The estimated monthly payment for repayment in 36 months must be rounded either to the nearest whole dollar or to the nearest cent, at the card issuer’s option;

(ii) A statement that the card issuer estimates that the consumer will repay the outstanding balance shown on the periodic statement in 3 years if the consumer pays the estimated monthly payment each month for 3 years;

(iii) The total cost estimate for repayment in 36 months, as described in Appendix M1 to this part. The total cost estimate for repayment in 36 months must be rounded either to the nearest whole dollar or to the nearest cent, at the card issuer’s option; and

(iv) The savings estimate for repayment in 36 months, as described in Appendix M1 to this part. The savings estimate for repayment in 36 months must be rounded either to the nearest whole dollar or to the nearest cent, at the card issuer’s option.

(2) The requirements of paragraph (b)(12)(i)(F)(1) of this section do not apply to a periodic statement in any of the following circumstances:

(i) The minimum payment repayment estimate that is disclosed on the periodic statement pursuant to paragraph (b)(12)(i)(B) of this section after rounding is three years or less;

(ii) The estimated monthly payment for repayment in 36 months, as described in Appendix M1 to this part, after rounding as set forth in paragraph (b)(12)(f)(1)(i) of this section that is calculated for a particular billing cycle is less than the minimum payment required for the plan for that billing cycle; and

(iii) A billing cycle where an account has both a balance in a revolving feature where the required minimum payments for this feature will not amortize that balance in a fixed amount of time specified in the account agreement and a balance in a fixed repayment feature where the required minimum payment for this fixed repayment feature will amortize that balance in a fixed amount of time specified in the account agreement which is less than 36 months.

(ii) *Negative or no amortization.* If negative or no amortization occurs when calculating the minimum payment repayment estimate as described in Appendix M1 of this part, a card issuer must provide the following

disclosures on the periodic statement instead of the disclosures set forth in paragraph (b)(12)(i) of this section:

(A) The following statement: “Minimum Payment Warning: Even if you make no more charges using this card, if you make only the minimum payment each month we estimate you will never pay off the balance shown on this statement because your payment will be less than the interest charged each month”;

(B) The following statement: “If you make more than the minimum payment each period, you will pay less in interest and pay off your balance sooner”;

(C) The estimated monthly payment for repayment in 36 months, as described in Appendix M1 to this part. The estimated monthly payment for repayment in 36 months must be rounded either to the nearest whole dollar or to the nearest cent, at the issuer’s option;

(D) A statement that the card issuer estimates that the consumer will repay the outstanding balance shown on the periodic statement in 3 years if the consumer pays the estimated monthly payment each month for 3 years; and

(E) A toll-free telephone number where the consumer may obtain from the card issuer information about credit counseling services consistent with paragraph (b)(12)(iv) of this section.

\* \* \* \* \*

(14) *Deferred interest or similar transactions.* For accounts with an outstanding balance subject to a deferred interest or similar program, the date by which that outstanding balance must be paid in full in order to avoid the obligation to pay finance charges on such balance must be disclosed on the front of any page of each periodic statement issued during the deferred interest period beginning with the first periodic statement issued during the deferred interest period that reflects the deferred interest or similar transaction. The disclosure provided pursuant to this paragraph must be substantially similar to Sample G–18(H) in Appendix G to this part.

■ 7. Section 226.9 is amended by adding paragraph (b)(3)(ii) and by revising paragraphs (c)(2)(i)(A), (c)(2)(ii), (c)(2)(iii), (c)(2)(iv)(A)(1), (c)(2)(iv)(B), (c)(2)(iv)(D), (c)(2)(v)(B)(1) through (3), (c)(2)(v)(C), and (c)(2)(v)(D).

The additions and revisions read as follows:

§ 226.9 Subsequent disclosure requirements.

\* \* \* \* \*

(b) \* \* \*

(3) \* \* \*

(iii) *Variable rates.* If any annual percentage rate required to be disclosed pursuant to paragraph (b)(3)(i) of this section is a variable rate, the card issuer shall also disclose the fact that the rate may vary and how the rate is determined. In describing how the applicable rate will be determined, the card issuer must identify the type of index or formula that is used in setting the rate. The value of the index and the amount of the margin that are used to calculate the variable rate shall not be disclosed in the table. A disclosure of any applicable limitations on rate increases shall not be included in the table.

(c) \* \* \*  
(2) \* \* \*  
(i) \* \* \*

(A) *General.* For plans other than home-equity plans subject to the requirements of § 226.5b, except as provided in paragraphs (c)(2)(i)(B), (c)(2)(iii) and (c)(2)(v) of this section, when a significant change in account terms as described in paragraph (c)(2)(ii) of this section is made, a creditor must provide a written notice of the change at least 45 days prior to the effective date of the change to each consumer who may be affected. The 45-day timing requirement does not apply if the consumer has agreed to a particular change as described in paragraph (c)(2)(i)(B) of this section; for such changes, notice must be given in accordance with the timing requirements of paragraph (c)(2)(i)(B) of this section. Increases in the rate applicable to a consumer's account due to delinquency, default or as a penalty described in paragraph (g) of this section that are not due to a change in the contractual terms of the consumer's account must be disclosed pursuant to paragraph (g) of this section instead of paragraph (c)(2) of this section.

\* \* \* \* \*

(ii) *Significant changes in account terms.* For purposes of this section, a "significant change in account terms" means a change to a term required to be disclosed under § 226.6(b)(1) and (b)(2), an increase in the required minimum periodic payment, a change to a term required to be disclosed under § 226.6(b)(4), or the acquisition of a security interest.

(iii) *Charges not covered by § 226.6(b)(1) and (b)(2).* Except as provided in paragraph (c)(2)(vi) of this section, if a creditor increases any component of a charge, or introduces a new charge, required to be disclosed under § 226.6(b)(3) that is not a significant change in account terms as described in paragraph (c)(2)(ii) of this

section, a creditor must either, at its option:

(A) Comply with the requirements of paragraph (c)(2)(i) of this section; or

(B) Provide notice of the amount of the charge before the consumer agrees to or becomes obligated to pay the charge, at a time and in a manner that a consumer would be likely to notice the disclosure of the charge. The notice may be provided orally or in writing.

(iv) \* \* \*

(A) \* \* \*

(1) A summary of the changes made to terms required by § 226.6(b)(1) and (b)(2) or § 226.6(b)(4), a description of any increase in the required minimum periodic payment, and a description of any security interest being acquired by the creditor;

\* \* \* \* \*

(B) *Right to reject for credit card accounts under an open-end (not home-secured) consumer credit plan.* In addition to the disclosures in paragraph (c)(2)(iv)(A) of this section, if a card issuer makes a significant change in account terms on a credit card account under an open-end (not home-secured) consumer credit plan, the creditor must generally provide the following information on the notice provided pursuant to paragraph (c)(2)(i) of this section. This information is not required to be provided in the case of an increase in the required minimum periodic payment, an increase in a fee as a result of a reevaluation of a determination made under § 226.52(b)(1)(i) or an adjustment to the safe harbors in § 226.52(b)(1)(ii) to reflect changes in the Consumer Price Index, a change in an annual percentage rate applicable to a consumer's account, an increase in a fee previously reduced consistent with 50 U.S.C. app. 527 or a similar Federal or State statute or regulation if the amount of the increased fee does not exceed the amount of that fee prior to the reduction, or when the change results from the creditor not receiving the consumer's required minimum periodic payment within 60 days after the due date for that payment:

\* \* \* \* \*

(D) *Format requirements.* (1) *Tabular format.* The summary of changes described in paragraph (c)(2)(iv)(A)(1) of this section must be in a tabular format (except for a summary of any increase in the required minimum periodic payment, a summary of a term required to be disclosed under § 226.6(b)(4) that is not required to be disclosed under § 226.6(b)(1) and (b)(2), or a description of any security interest being acquired by the creditor), with headings and format substantially similar to any of the

account-opening tables found in G-17 in appendix G to this part. The table must disclose the changed term and information relevant to the change, if that relevant information is required by § 226.6(b)(1) and (b)(2). The new terms shall be described in the same level of detail as required when disclosing the terms under § 226.6(b)(2).

\* \* \* \* \*

(v) \* \* \*

(B) When the change is an increase in an annual percentage rate or fee upon the expiration of a specified period of time, provided that:

(1) Prior to commencement of that period, the creditor disclosed in writing to the consumer, in a clear and conspicuous manner, the length of the period and the annual percentage rate or fee that would apply after expiration of the period;

(2) The disclosure of the length of the period and the annual percentage rate or fee that would apply after expiration of the period are set forth in close proximity and in equal prominence to the first listing of the disclosure of the rate or fee that applies during the specified period of time; and

(3) The annual percentage rate or fee that applies after that period does not exceed the rate or fee disclosed pursuant to paragraph (c)(2)(v)(B)(1) of this paragraph or, if the rate disclosed pursuant to paragraph (c)(2)(v)(B)(1) of this section was a variable rate, the rate following any such increase is a variable rate determined by the same formula (index and margin) that was used to calculate the variable rate disclosed pursuant to paragraph (c)(2)(v)(B)(1);

(C) When the change is an increase in a variable annual percentage rate in accordance with a credit card or other account agreement that provides for changes in the rate according to operation of an index that is not under the control of the creditor and is available to the general public; or

(D) When the change is an increase in an annual percentage rate, a fee or charge required to be disclosed under § 226.6(b)(2)(ii), (b)(2)(iii), (b)(2)(viii), (b)(2)(ix), (b)(2)(ix) or (b)(2)(xii), or the required minimum periodic payment due to the completion of a workout or temporary hardship arrangement by the consumer or the consumer's failure to comply with the terms of such an arrangement, provided that:

\* \* \* \* \*

■ 8. Section 226.10 is amending by revising paragraphs (b)(4) and (e) to read as follows:

**§ 226.10 Payments.**

\* \* \* \* \*

(b) \* \* \*

(4) *Nonconforming payments.* (i) *In general.* Except as provided in paragraph (b)(4)(ii) of this section, if a creditor specifies, on or with the periodic statement, requirements for the consumer to follow in making payments as permitted under this § 226.10, but accepts a payment that does not conform to the requirements, the creditor shall credit the payment within five days of receipt.

(ii) *Payment methods promoted by creditor.* If a creditor promotes a method for making payments, such payments shall be considered conforming payments in accordance with this paragraph (b) and shall be credited to the consumer's account as of the date of receipt, except when a delay in crediting does not result in a finance or other charge.

\* \* \* \* \*

(e) *Limitations on fees related to method of payment.* For credit card accounts under an open-end (not home-secured) consumer credit plan, a creditor may not impose a separate fee to allow consumers to make a payment by any method, such as mail, electronic, or telephone payments, unless such payment method involves an expedited service by a customer service representative of the creditor. For purposes of paragraph (e) of this section, the term "creditor" includes a third party that collects, receives, or processes payments on behalf of a creditor.

\* \* \* \* \*

■ 9. Section 226.16(g) is revised to read as follows:

**§ 226.16 Advertising.**

\* \* \* \* \*

(g) *Promotional rates and fees.* (1) *Scope.* The requirements of this paragraph apply to any advertisement of an open-end (not home-secured) plan, including promotional materials accompanying applications or solicitations subject to § 226.5a(c) or accompanying applications or solicitations subject to § 226.5a(e).

(2) *Definitions.* (i) *Promotional rate* means any annual percentage rate applicable to one or more balances or transactions on an open-end (not home-secured) plan for a specified period of time that is lower than the annual percentage rate that will be in effect at the end of that period on such balances or transactions.

(ii) *Introductory rate* means a promotional rate offered in connection with the opening of an account.

(iii) *Promotional period* means the maximum time period for which a promotional rate or promotional fee may be applicable.

(iv) *Promotional fee* means a fee required to be disclosed under § 226.6(b)(1) and (2) applicable to an open-end (not home-secured) plan, or to one or more balances or transactions on an open-end (not home-secured) plan, for a specified period of time that is lower than the fee that will be in effect at the end of that period for such plan or types of balances or transactions.

(v) *Introductory fee* means a promotional fee offered in connection with the opening of an account.

(3) *Stating the term "introductory."* If any annual percentage rate or fee that may be applied to the account is an introductory rate or introductory fee, the term *introductory* or *intro* must be in immediate proximity to each listing of the introductory rate or introductory fee in a written or electronic advertisement.

(4) *Stating the promotional period and post-promotional rate or fee.* If any annual percentage rate that may be applied to the account is a promotional rate under paragraph (g)(2)(i) of this section or any fee that may be applied to the account is a promotional fee under paragraph (g)(2)(iv) of this section, the information in paragraphs (g)(4)(i) and, as applicable, (g)(4)(ii) or (iii) of this section must be stated in a clear and conspicuous manner in the advertisement. If the rate or fee is stated in a written or electronic advertisement, the information in paragraphs (g)(4)(i) and, as applicable, (g)(4)(ii) or (iii) of this section must also be stated in a prominent location closely proximate to the first listing of the promotional rate or promotional fee.

(i) When the promotional rate or promotional fee will end;

(ii) The annual percentage rate that will apply after the end of the promotional period. If such rate is variable, the annual percentage rate must comply with the accuracy standards in §§ 226.5a(c)(2), 226.5a(d)(3), 226.5a(e)(4), or 226.16(b)(1)(ii), as applicable. If such rate cannot be determined at the time disclosures are given because the rate depends at least in part on a later determination of the consumer's creditworthiness, the advertisement must disclose the specific rates or the range of rates that might apply; and

(iii) The fee that will apply after the end of the promotional period.

(5) *Envelope excluded.* The requirements in paragraph (g)(4) of this section do not apply to an envelope or other enclosure in which an application or solicitation is mailed, or to a banner advertisement or pop-up advertisement, linked to an application or solicitation provided electronically.

\* \* \* \* \*

■ 10. Section 226.51 is amended by revising paragraphs (a)(1) and (b)(1)(ii)(B) to read as follows:

**§ 226.51 Ability to pay.**

(a) *General rule.* (1)(i) *Consideration of ability to pay.* A card issuer must not open a credit card account for a consumer under an open-end (not home-secured) consumer credit plan, or increase any credit limit applicable to such account, unless the card issuer considers the consumer's independent ability to make the required minimum periodic payments under the terms of the account based on the consumer's income or assets and current obligations.

(ii) *Reasonable policies and procedures.* Card issuers must establish and maintain reasonable written policies and procedures to consider a consumer's independent income or assets and current obligations. Reasonable policies and procedures to consider a consumer's independent ability to make the required payments include the consideration of at least one of the following: The ratio of debt obligations to income; the ratio of debt obligations to assets; or the income the consumer will have after paying debt obligations. It would be unreasonable for a card issuer to not review any information about a consumer's income, assets, or current obligations, or to issue a credit card to a consumer who does not have any independent income or assets.

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(ii) \* \* \*

(B) Financial information indicating such cosigner, guarantor, or joint applicant has the independent ability to make the required minimum periodic payments on such debts, consistent with paragraph (a) of this section.

\* \* \* \* \*

■ 11. Section 226.52 is amended by revising the heading to paragraph (a) and by revising paragraphs (a)(1), (a)(3), and (b)(1)(ii) to read as follows:

**§ 226.52 Limitations on fees.**

(a) *Limitations prior to account opening and during first year after account opening.* (1) *General rule.* Except as provided in paragraph (a)(2) of this section, the total amount of fees a consumer is required to pay with respect to a credit card account under an open-end (not home-secured) consumer credit plan prior to account opening and during the first year after account opening must not exceed 25 percent of the credit limit in effect when



the account is opened. For purposes of this paragraph, an account is considered open no earlier than the date on which the account may first be used by the consumer to engage in transactions.

\* \* \* \* \*

(3) *Rule of construction.* Paragraph (a) of this section does not authorize the imposition or payment of fees or charges otherwise prohibited by law.

(b) \* \* \*

(1) \* \* \*

(ii) *Safe harbors.* A card issuer may impose a fee for violating the terms or other requirements of an account if the dollar amount of the fee does not exceed, as applicable:

(A) \$25.00;

(B) \$35.00 if the card issuer previously imposed a fee pursuant to paragraph (b)(1)(ii)(A) of this section for a violation of the same type that occurred during the same billing cycle or one of the next six billing cycles; or

(C) Three percent of the delinquent balance on a charge card account that requires payment of outstanding balances in full at the end of each billing cycle if the card issuer has not received the required payment for two or more consecutive billing cycles.

(D) The amounts in paragraphs (b)(1)(ii)(A) and (b)(1)(ii)(B) of this section will be adjusted annually by the Board to reflect changes in the Consumer Price Index.

\* \* \* \* \*

■ 12. Section 226.53 is amended by revising paragraph (b) to read as follows:

**§ 226.53 Allocation of payments.**

\* \* \* \* \*

(b) *Special rules.* (1) *Accounts with balances subject to deferred interest or similar program.* When a balance on a credit card account under an open-end (not home-secured) consumer credit plan is subject to a deferred interest or similar program that provides that a consumer will not be obligated to pay interest that accrues on the balance if the balance is paid in full prior to the expiration of a specified period of time:

(i) *Last two billing cycles.* The card issuer must allocate any amount paid by the consumer in excess of the required minimum periodic payment consistent with paragraph (a) of this section, except that, during the two billing cycles immediately preceding expiration of the specified period, the excess amount must be allocated first to the balance subject to the deferred interest or similar program and any remaining portion allocated to any other balances consistent with paragraph (a) of this section; or

(ii) *Consumer request.* The card issuer may at its option allocate any amount

paid by the consumer in excess of the required minimum periodic payment among the balances on the account in the manner requested by the consumer.

(2) *Accounts with secured balances.*

When a balance on a credit card account under an open-end (not home-secured) consumer credit plan is secured, the card issuer may at its option allocate any amount paid by the consumer in excess of the required minimum periodic payment to that balance if requested by the consumer.

■ 13. Section 226.55 is amended by revising paragraphs (b)(1), (b)(3)(iii), and (b)(6), and by adding paragraph (e) to read as follows:

**§ 226.55 Limitations on increasing annual percentage rates, fees, and charges.**

\* \* \* \* \*

(b) \* \* \*

(1) *Temporary rate, fee, or charge exception.* A card issuer may increase an annual percentage rate or a fee or charge required to be disclosed under § 226.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii) upon the expiration of a specified period of six months or longer, provided that:

(i) Prior to the commencement of that period, the card issuer disclosed in writing to the consumer, in a clear and conspicuous manner, the length of the period and the annual percentage rate, fee, or charge that would apply after expiration of the period; and

(ii) Upon expiration of the specified period:

(A) The card issuer must not apply an annual percentage rate, fee, or charge to transactions that occurred prior to the period that exceeds the annual percentage rate, fee, or charge that applied to those transactions prior to the period;

(B) If the disclosures required by paragraph (b)(1)(i) of this section are provided pursuant to § 226.9(c), the card issuer must not apply an annual percentage rate, fee, or charge to transactions that occurred within 14 days after provision of the notice that exceeds the annual percentage rate, fee, or charge that applied to that category of transactions prior to provision of the notice; and

(C) The card issuer must not apply an annual percentage rate, fee, or charge to transactions that occurred during the period that exceeds the increased annual percentage rate, fee, or charge disclosed pursuant to paragraph (b)(1)(i) of this section.

\* \* \* \* \*

(3) \* \* \*

(iii) This exception does not permit a card issuer to increase an annual percentage rate or a fee or charge

required to be disclosed under § 226.6(b)(2)(ii), (iii), or (xii) during the first year after the account is opened, while the account is closed, or while the card issuer does not permit the consumer to use the account for new transactions. For purposes of this paragraph, an account is considered open no earlier than the date on which the account may first be used by the consumer to engage in transactions.

\* \* \* \* \*

(6) *Servicemembers Civil Relief Act exception.* If an annual percentage rate or a fee or charge required to be disclosed under § 226.6(b)(2)(ii), (iii), or (xii) has been decreased pursuant to 50 U.S.C. app. 527 or a similar Federal or State statute or regulation, a card issuer may increase that annual percentage rate, fee, or charge once 50 U.S.C. app. 527 or the similar statute or regulation no longer applies, provided that the card issuer must not apply to any transactions that occurred prior to the decrease an annual percentage rate, fee, or charge that exceeds the annual percentage rate, fee, or charge that applied to those transactions prior to the decrease.

\* \* \* \* \*

(e) *Promotional waivers or rebates of interest, fees, and other charges.* If a card issuer promotes the waiver or rebate of finance charges due to a periodic interest rate or fees or charges required to be disclosed under § 226.6(b)(2)(ii), (iii), or (xii) and applies the waiver or rebate to a credit card account under an open-end (not home-secured) consumer credit plan, any cessation of the waiver or rebate on that account constitutes an increase in an annual percentage rate, fee, or charge for purposes of this section.

■ 14. Section 226.58 is amended by:

■ A. Revising paragraphs (b)(1) and (2);

■ B. Redesignating paragraphs (b)(4) through (7) as paragraphs (b)(5) through (8);

■ C. Adding a new paragraph (b)(4); and

■ D. Revising paragraphs (c)(1) and (3), removing and reserving paragraph (c)(2), and revising paragraph (c)(8) to read as follows:

**§ 226.58 Internet posting of credit card agreements.**

\* \* \* \* \*

(b) *Definitions.* (1) *Agreement.* For purposes of this section, “agreement” or “credit card agreement” means the written document or documents evidencing the terms of the legal obligation, or the prospective legal obligation, between a card issuer and a consumer for a credit card account under an open-end (not home-secured)

consumer credit plan. "Agreement" or "credit card agreement" also includes the pricing information, as defined in § 226.58(b)(7).

(2) *Amends.* For purposes of this section, an issuer "amends" an agreement if it makes a substantive change (an "amendment") to the agreement. A change is substantive if it alters the rights or obligations of the card issuer or the consumer under the agreement. Any change in the pricing information, as defined in § 226.58(b)(7), is deemed to be substantive.

\* \* \* \* \*

(4) *Card issuer.* For purposes of this section, "card issuer" or "issuer" means the entity to which a consumer is legally obligated, or would be legally obligated, under the terms of a credit card agreement.

\* \* \* \* \*

(c) *Submission of agreements to Board.* (1) *Quarterly submissions.* A card issuer must make quarterly submissions to the Board, in the form and manner specified by the Board. Quarterly submissions must be sent to the Board no later than the first business day on or after January 31, April 30, July 31, and October 31 of each year. Each submission must contain:

(i) Identifying information about the card issuer and the agreements submitted, including the issuer's name, address, and identifying number (such as an RSSD ID number or tax identification number);

(ii) The credit card agreements that the card issuer offered to the public as of the last business day of the preceding calendar quarter that the card issuer has not previously submitted to the Board;

(iii) Any credit card agreement previously submitted to the Board that was amended during the preceding calendar quarter and that the card issuer offered to the public as of the last business day of the preceding calendar quarter, as described in § 226.58(c)(3); and

(iv) Notification regarding any credit card agreement previously submitted to the Board that the issuer is withdrawing, as described in § 226.58(c)(4), (c)(5), (c)(6), and (c)(7).

(2) [Reserved].

(3) *Amended agreements.* If a credit card agreement has been submitted to the Board, the agreement has not been amended and the card issuer continues to offer the agreement to the public, no additional submission regarding that agreement is required. If a credit card agreement that previously has been submitted to the Board is amended and the card issuer offered the amended

agreement to the public as of the last business day of the calendar quarter in which the change became effective, the card issuer must submit the entire amended agreement to the Board, in the form and manner specified by the Board, by the first quarterly submission deadline after the last day of the calendar quarter in which the change became effective.

\* \* \* \* \*

(8) *Form and content of agreements submitted to the Board.* (i) *Form and content generally.* (A) Each agreement must contain the provisions of the agreement and the pricing information in effect as of the last business day of the preceding calendar quarter.

(B) Agreements must not include any personally identifiable information relating to any cardholder, such as name, address, telephone number, or account number.

(C) The following are not deemed to be part of the agreement for purposes of § 226.58, and therefore are not required to be included in submissions to the Board:

(1) Disclosures required by State or Federal law, such as affiliate marketing notices, privacy policies, billing rights notices, or disclosures under the E-Sign Act;

(2) Solicitation materials;

(3) Periodic statements;

(4) Ancillary agreements between the issuer and the consumer, such as debt cancellation contracts or debt suspension agreements;

(5) Offers for credit insurance or other optional products and other similar advertisements; and

(6) Documents that may be sent to the consumer along with the credit card or credit card agreement such as a cover letter, a validation sticker on the card, or other information about card security.

(D) Agreements must be presented in a clear and legible font.

(ii) *Pricing information.* (A) Pricing information must be set forth in a single addendum to the agreement. The addendum must contain all of the pricing information, as defined by § 226.58(b)(7). The addendum may, but is not required to, contain any other information listed in § 226.6(b), provided that information is complete and accurate as of the applicable date under § 226.58. The addendum may not contain any other information.

(B) Pricing information that may vary from one cardholder to another depending on the cardholder's creditworthiness or state of residence or other factors must be disclosed either by setting forth all the possible variations (such as purchase APRs of 13 percent,

15 percent, 17 percent, and 19 percent) or by providing a range of possible variations (such as purchase APRs ranging from 13 percent to 19 percent).

(C) If a rate included in the pricing information is a variable rate, the issuer must identify the index or formula used in setting the rate and the margin. Rates that may vary from one cardholder to another must be disclosed by providing the index and the possible margins (such as the prime rate plus 5 percent, 8 percent, 10 percent, or 12 percent) or range of margins (such as the prime rate plus from 5 to 12 percent). The value of the rate and the value of the index are not required to be disclosed.

(iii) *Optional variable terms addendum.* Provisions of the agreement other than the pricing information that may vary from one cardholder to another depending on the cardholder's creditworthiness or state of residence or other factors may be set forth in a single addendum to the agreement separate from the pricing information addendum.

(iv) *Integrated agreement.* Issuers may not provide provisions of the agreement or pricing information in the form of change-in-terms notices or riders (other than the pricing information addendum and the optional variable terms addendum). Changes in provisions or pricing information must be integrated into the text of the agreement, the pricing information addendum or the optional variable terms addendum, as appropriate.

\* \* \* \* \*

■ 15. Appendix M1 to part 226 is amended by revising paragraph (f) to read as follows:

**Appendix M1 to Part 226—Repayment Disclosures**

\* \* \* \* \*

(f) *Calculating the savings estimate for repayment in 36 months.* When calculating the savings estimate for repayment in 36 months, if a card issuer chooses under § 226.7(b)(12)(i) to round the disclosures to the nearest whole dollar when disclosing them on the periodic statement, the card issuer must calculate the savings estimate for repayment in 36 months by subtracting the total cost estimate for repayment in 36 months calculated under paragraph (e) of this appendix (rounded to the nearest whole dollar) from the minimum payment total cost estimate calculated under paragraph (c) of this appendix (rounded to the nearest whole dollar). If a card issuer chooses under § 227.7(b)(12)(i), however, to round the disclosures to the nearest cent when disclosing them on the periodic statement, the card issuer must calculate the savings estimate for repayment in 36 months by subtracting the total cost estimate for repayment in 36 months calculated under paragraph (e) of this appendix (rounded to the nearest cent) from the minimum payment

total cost estimate calculated under paragraph (c) of this appendix (rounded to the nearest cent). The savings estimate for repayment in 36 months shall be considered accurate if it is based on the total cost estimate for repayment in 36 months that is calculated in accordance with paragraph (e) of this appendix and the minimum payment total cost estimate calculated under paragraph (c) of this appendix.

- 16. In Supplement I to Part 226:
  - A. Under Section 226.2—*Definitions and Rules of Construction*, subheading 2(a)(15) *Credit card*, paragraphs 2. and 3. are revised and paragraph 4. is added.
  - B. Under Section 226.5—*General Disclosure Requirements*, subheading 5(b)(2) *Periodic statements*:
    - i. Under Paragraph 5(b)(2)(ii), paragraphs 1. through 4. are revised; and
    - ii. The heading Paragraph 5(b)(2)(iii) and paragraph 1. under that heading are removed.
  - C. Under Section 226.5a—*Credit and Charge Card Applications and Solicitations*, 5a(b) *Required disclosures* is revised.
  - D. Under Section 226.6—*Account-Opening Disclosures*, subheading 6(b) *Rules affecting open-end (not home-secured) plans*, 6(b)(2) *Required disclosures for account-opening table for open-end (not home-secured) plans* is revised.
  - E. Under Section 226.7—*Periodic Statement*, 7(b) *Rules affecting open-end (not home-secured) plans* is revised.
  - F. Under Section 226.9—*Subsequent Disclosure Requirements*:
    - i. Under 9(b) *Disclosures for supplemental credit access devices and additional features*, 9(b)(3) *Checks that access a credit card account* is revised;
    - ii. Under 9(c) *Change in terms*, 9(c)(2) *Rules affecting open-end (not home-secured) plans* is revised;
    - iii. Under 9(e) *Disclosures upon renewal of credit or charge card*, paragraph 10. is revised.
  - G. Under Section 226.10—*Payments*:
    - i. Under 10(b) *Specific requirements for payments*, paragraph 2. is revised;
    - ii. Under 10(e) *Limitations on fees related to method of payment*, paragraph 4. is added; and
    - iii. Under 10(f) *Changes by card issuer*, paragraph 3. is revised.
  - H. Under Section 226.12—*Special Credit Card Provisions*, subheading 12(c) *Right of cardholder to assert claims or defenses against card issuer*, paragraph 4. is revised.
  - I. Under Section 226.13—*Billing Error Resolution*, subheading 13(c) *Time for resolution; general procedures*, subheading Paragraph 13(c)(2), paragraph 2. is revised.
  - J. Under Section 226.14—*Determination of Annual Percentage*

*Rate*, subheading 14(a) *General rule*, paragraph 6. is added.

- K. Under Section 226.16—*Advertising*:
  - i. Paragraphs 1. and 2. are revised; and
  - ii. 16(g) *Promotional rates* is revised.
- L. Under Section 226.30—*Limitation on Rates*, paragraph 8. is revised.
- M. Section 226.51—*Ability to Pay* is revised.
- N. Section 226.52—*Limitations on Fees* is revised.
- O. Under Section 226.53—*Allocation of Payments*:
  - i. Paragraphs 4. and 5. are revised; and
  - ii. 53(b) is revised.
- P. Under Section 226.55—*Limitations on Increasing Annual Percentage Rates, Fees, and Charges*:
  - i. 55(a) *General rule* is revised;
  - ii. Under 55(b) *Exceptions*, paragraphs 1. and 3. are revised;
  - iii. 55(b)(1) *Temporary rate exception* is revised;
  - iv. Under 55(b)(3) *Advance notice exception*, paragraphs 6. and 7. are added;
  - v. 55(b)(6) *Servicemembers Civil Relief Act exception* is revised;
  - vi. Under 55(c) *Treatment of protected balances*, 55(c)(1) *Definition of protected balance* is revised; and
  - vii. 55(e) *Promotional waivers or rebates of interest, fees, and other charges* is added.
- Q. Under Section 226.58—*Internet Posting of Credit Card Agreements*:
  - i. 58(b) *Definitions* is revised;
  - ii. Under 58(c) *Submission of agreements to Board*, 58(c)(3) *Amended agreements* is revised;
  - iii. 58(d) *Posting of agreements offered to the public* is revised; and
  - iv. 58(e) *Agreements for all open accounts* is revised.
- R. Under Section 226.59—*Reevaluation of Rate Increases*:
  - i. Under 59(a) *General rule*, 59(a)(1) *Evaluation of increased rate* is revised;
  - ii. Under 59(d) *Factors*, paragraph 6. is added; and
  - iii. 59(f) *Termination of obligation to review factors* is revised.

The revisions and additions read as follows:

#### Supplement I to Part 226—Official Staff Interpretations

\* \* \* \* \*

#### Subpart A—General

\* \* \* \* \*

#### § 226.2—Definitions and Rules of Construction

\* \* \* \* \*

2(a)(15) *Credit card*.

\* \* \* \* \*

2. *Examples*. i. Examples of credit cards include:

A. A card that guarantees checks or similar instruments, if the asset account is also tied to an overdraft line or if the instrument directly accesses a line of credit.

B. A card that accesses both a credit and an asset account (that is, a debit-credit card).

C. An identification card that permits the consumer to defer payment on a purchase.

D. An identification card indicating loan approval that is presented to a merchant or to a lender, whether or not the consumer signs a separate promissory note for each credit extension.

E. A card or device that can be activated upon receipt to access credit, even if the card has a substantive use other than credit, such as a purchase-price discount card. Such a card or device is a credit card notwithstanding the fact that the recipient must first contact the card issuer to access or activate the credit feature.

ii. In contrast, credit card does not include, for example:

A. A check-guarantee or debit card with no credit feature or agreement, even if the creditor occasionally honors an inadvertent overdraft.

B. Any card, key, plate, or other device that is used in order to obtain petroleum products for business purposes from a wholesale distribution facility or to gain access to that facility, and that is required to be used without regard to payment terms.

C. An account number that accesses a credit account, unless the account number can access an open-end line of credit to purchase goods or services. For example, if a creditor provides a consumer with an open-end line of credit that can be accessed by an account number in order to transfer funds into another account (such as an asset account with the same creditor), the account number is not a credit card for purposes of § 226.2(a)(15)(i). However, if the account number can also access the line of credit to purchase goods or services (such as an account number that can be used to purchase goods or services on the Internet), the account number is a credit card for purposes of § 226.2(a)(15)(i), regardless of whether the creditor treats such transactions as purchases, cash advances, or some other type of transaction. Furthermore, if the line of credit can also be accessed by a card (such as a debit card), that card is a credit card for purposes of § 226.2(a)(15)(i).

3. *Charge card*. Generally, charge cards are cards used in connection with an account on which outstanding balances cannot be carried from one billing cycle to another and are payable when a periodic statement is received. Under the regulation, a reference to credit cards generally includes charge cards. In particular, references to credit card accounts under an open-end (not home-secured) consumer credit plan in Subparts B and G generally include charge cards. The term *charge card* is, however, distinguished from *credit card* or *credit card account* under an open-end (not home-secured) consumer credit plan in §§ 226.5a, 226.6(b)(2)(xiv), 226.7(b)(11), 226.7(b)(12), 226.9(e), 226.9(f), 226.28(d), 226.52(b)(1)(ii)(C), and appendices G–10 through G–13.

4. *Credit card account under an open-end (not home-secured) consumer credit plan*. An

open-end consumer credit account is a credit card account under an open-end (not home-secured) consumer credit plan for purposes of § 226.2(a)(15)(ii) if:

i. The account is accessed by a credit card, as defined in § 226.2(a)(15)(i); and

ii. The account is not excluded under § 226.2(a)(15)(ii)(A) or (a)(15)(ii)(B).

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### Subpart B—Open-End Credit

#### § 226.5—General Disclosure Requirements

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##### 5(b)(2) Periodic statements.

\* \* \* \* \*

##### Paragraph 5(b)(2)(ii).

##### 1. Mailing or delivery of periodic statements.

A creditor is not required to determine the specific date on which a periodic statement is mailed or delivered to an individual consumer for purposes of § 226.5(b)(2)(ii). A creditor complies with § 226.5(b)(2)(ii) if it has adopted reasonable procedures designed to ensure that periodic statements are mailed or delivered to consumers no later than a certain number of days after the closing date of the billing cycle and adds that number of days to the 21-day or 14-day period required by § 226.5(b)(2)(ii) when determining, as applicable, the payment due date for purposes of § 226.5(b)(2)(ii)(A), the date on which any grace period expires for purposes of § 226.5(b)(2)(ii)(B)(1), or the date after which the payment will be treated as late for purposes of § 226.5(b)(2)(ii)(B)(2). For example:

A. If a creditor has adopted reasonable procedures designed to ensure that periodic statements for a credit card account under an open-end (not home-secured) consumer credit plan or an account under an open-end consumer credit plan that provides a grace period are mailed or delivered to consumers no later than three days after the closing date of the billing cycle, the payment due date for purposes of § 226.5(b)(2)(ii)(A) and the date on which any grace period expires for purposes of § 226.5(b)(2)(ii)(B)(1) must be no less than 24 days after the closing date of the billing cycle. Similarly, in these circumstances, the limitations in § 226.5(b)(2)(ii)(A) and (b)(2)(ii)(B)(1) on treating a payment as late and imposing finance charges apply for 24 days after the closing date of the billing cycle.

B. If a creditor has adopted reasonable procedures designed to ensure that periodic statements for an account under an open-end consumer credit plan that does not provide a grace period are mailed or delivered to consumers no later than five days after the closing date of the billing cycle, the date on which a payment must be received in order to avoid being treated as late for purposes of § 226.5(b)(2)(ii)(B)(2) must be no less than 19 days after the closing date of the billing cycle. Similarly, in these circumstances, the limitation in § 226.5(b)(2)(ii)(B)(2) on treating a payment as late for any purpose applies for 19 days after the closing date of the billing cycle.

2. Treating a payment as late for any purpose. Treating a payment as late for any purpose includes increasing the annual

percentage rate as a penalty, reporting the consumer as delinquent to a credit reporting agency, assessing a late fee or any other fee, initiating collection activities, or terminating benefits (such as rewards on purchases) based on the consumer's failure to make a payment within a specified amount of time or by a specified date. The prohibitions in § 226.5(b)(2)(ii)(A)(2) and (b)(2)(ii)(B)(2) apply only during the 21-day or 14-day period (as applicable) following mailing or delivery of the periodic statement stating the due date for that payment and only if the required minimum periodic payment is received within that period. For example:

i. Assume that, for a credit card account under an open-end (not home-secured) consumer credit plan, a periodic statement mailed on April 4 states that a required minimum periodic payment of \$50 is due on April 25. If the card issuer does not receive any payment on or before April 25, § 226.5(b)(2)(ii)(A)(2) does not prohibit the card issuer from treating the required minimum periodic payment as late.

ii. Same facts as in paragraph i. above. On April 20, the card issuer receives a payment of \$30 and no additional payment is received on or before April 25. Section 226.5(b)(2)(ii)(A)(2) does not prohibit the card issuer from treating the required minimum periodic payment as late.

iii. Same facts as in paragraph i. above. On May 4, the card issuer has not received the \$50 required minimum periodic payment that was due on April 25. The periodic statement mailed on May 4 states that a required minimum periodic payment of \$150 is due on May 25. Section 226.5(b)(2)(ii)(A)(2) does not permit the card issuer to treat the \$150 required minimum periodic payment as late until April 26. However, the card issuer may continue to treat the \$50 required minimum periodic payment as late during this period.

iv. Assume that, for an account under an open-end consumer credit plan that does not provide a grace period, a periodic statement mailed on September 10 states that a required minimum periodic payment of \$100 is due on September 24. If the creditor does not receive any payment on or before September 24, § 226.5(b)(2)(ii)(B)(2) does not prohibit the creditor from treating the required minimum periodic payment as late.

3. Grace periods. i. Definition of grace period. For purposes of § 226.5(b)(2)(ii)(B), "grace period" means a period within which any credit extended may be repaid without incurring a finance charge due to a periodic interest rate. A deferred interest or similar promotional program under which the consumer is not obligated to pay interest that accrues on a balance if that balance is paid in full prior to the expiration of a specified period of time is not a grace period for purposes of § 226.5(b)(2)(ii)(B). Similarly, a period following the payment due date during which a late payment fee will not be imposed is not a grace period for purposes of § 226.5(b)(2)(ii)(B). See comments 7(b)(11)–1, 7(b)(11)–2, and 54(a)(1)–2.

ii. Applicability of § 226.5(b)(2)(ii)(B)(1). Section 226.5(b)(2)(ii)(B)(1) applies if an account is eligible for a grace period when

the periodic statement is mailed or delivered. Section 226.5(b)(2)(ii)(B)(1) does not require the creditor to provide a grace period or prohibit the creditor from placing limitations and conditions on a grace period to the extent consistent with § 226.5(b)(2)(ii)(B) and § 226.54. See comment 54(a)(1)–1.

Furthermore, the prohibition in § 226.5(b)(2)(ii)(B)(1)(ii) applies only during the 21-day period following mailing or delivery of the periodic statement and applies only when the creditor receives a payment within that 21-day period that satisfies the terms of the grace period.

iii. Example. Assume that the billing cycles for an account begin on the first day of the month and end on the last day of the month and that the payment due date for the account is the twenty-fifth of the month. Assume also that, under the terms of the account, the balance at the end of a billing cycle must be paid in full by the following payment due date in order for the account to remain eligible for the grace period. At the end of the April billing cycle, the balance on the account is \$500. The grace period applies to the \$500 balance because the balance for the March billing cycle was paid in full on April 25. Accordingly,

§ 226.5(b)(2)(ii)(B)(1)(i) requires the creditor to have reasonable procedures designed to ensure that the periodic statement reflecting the \$500 balance is mailed or delivered on or before May 4. Furthermore, § 226.5(b)(2)(ii)(B)(1)(ii) requires the creditor to have reasonable procedures designed to ensure that the creditor does not impose finance charges as a result of the loss of the grace period if a \$500 payment is received on or before May 25. However, if the creditor receives a payment of \$300 on April 25, § 226.5(b)(2)(ii)(B)(1)(ii) would not prohibit the creditor from imposing finance charges as a result of the loss of the grace period (to the extent permitted by § 226.54).

4. Application of § 226.5(b)(2)(ii) to charge card and charged-off accounts. i. Charge card accounts. For purposes of § 226.5(b)(2)(ii)(A)(1), the payment due date for a credit card account under an open-end (not home-secured) consumer credit plan is the date the card issuer is required to disclose on the periodic statement pursuant to § 226.7(b)(11)(i)(A). Because § 226.7(b)(11)(ii) provides that § 226.7(b)(11)(i) does not apply to periodic statements provided solely for charge card accounts, § 226.5(b)(2)(ii)(A)(1) also does not apply to the mailing or delivery of periodic statements provided solely for such accounts. However, in these circumstances, § 226.5(b)(2)(ii)(A)(2) requires the card issuer to have reasonable procedures designed to ensure that a payment is not treated as late for any purpose during the 21-day period following mailing or delivery of the statement. A card issuer that complies with § 226.5(b)(2)(ii)(A) as discussed above with respect to a charge card account has also complied with § 226.5(b)(2)(ii)(B)(2). Section 226.5(b)(2)(ii)(B)(1) does not apply to charge card accounts because, for purposes of § 226.5(b)(2)(ii)(B), a grace period is a period within which any credit extended may be repaid without incurring a finance charge due to a periodic interest rate and, consistent

with § 226.2(a)(15)(iii), charge card accounts do not impose a finance charge based on a periodic rate.

ii. *Charged-off accounts.* For purposes of § 226.5(b)(2)(ii)(A)(1), the payment due date for a credit card account under an open-end (not home-secured) consumer credit plan is the date the card issuer is required to disclose on the periodic statement pursuant to § 226.7(b)(11)(i)(A). Because § 226.7(b)(11)(ii) provides that § 226.7(b)(11)(i) does not apply to periodic statements provided for charged-off accounts where full payment of the entire account balance is due immediately, § 226.5(b)(2)(ii)(A)(1) also does not apply to the mailing or delivery of periodic statements provided solely for such accounts. Furthermore, although § 226.5(b)(2)(ii)(A)(2) requires the card issuer to have reasonable procedures designed to ensure that a payment is not treated as late for any purpose during the 21-day period following mailing or delivery of the statement, § 226.5(b)(2)(ii)(A)(2) does not prohibit a card issuer from continuing to treat prior payments as late during that period. See comment 5(b)(2)(ii)-2. Similarly, although § 226.5(b)(2)(ii)(B)(2) applies to open-end consumer credit accounts in these circumstances, § 226.5(b)(2)(ii)(B)(2)(ii) does not prohibit a creditor from continuing treating prior payments as late during the 14-day period following mailing or delivery of a periodic statement. Section 226.5(b)(2)(ii)(B)(1) does not apply to charged-off accounts where full payment of the entire account balance is due immediately because such accounts do not provide a grace period.

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#### § 226.5a—Credit and Charge Card Applications and Solicitations

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##### 5a(b) Required disclosures.

1. *Tabular format.* Provisions in § 226.5a(b) and its commentary provide that certain information must appear or is permitted to appear in a table. The tabular format is required for § 226.5a(b) disclosures given pursuant to § 226.5a(c), (d)(2), (e)(1) and (f). The tabular format does not apply to oral disclosures given pursuant to § 226.5a(d)(1). (See § 226.5a(a)(2).)

2. *Accuracy.* Rules concerning accuracy of the disclosures required by § 226.5a(b), including variable rate disclosures, are stated in § 226.5a(c)(2), (d)(3), and (e)(4), as applicable.

##### 5a(b)(1) Annual percentage rate.

1. *Variable-rate accounts—definition.* For purposes of § 226.5a(b)(1), a variable-rate account exists when rate changes are part of the plan and are tied to an index or formula. (See the commentary to § 226.6(b)(4)(ii) for examples of variable-rate plans.)

2. *Variable-rate accounts—fact that rate varies and how the rate will be determined.* In describing how the applicable rate will be determined, the card issuer must identify in the table the type of index or formula used, such as the prime rate. In describing the index, the issuer may not include in the table details about the index. For example, if the issuer uses a prime rate, the issuer must

disclose the rate as a “prime rate” and may not disclose in the table other details about the prime rate, such as the fact that it is the highest prime rate published in the *Wall Street Journal* two business days before the closing date of the statement for each billing period. The issuer may not disclose in the table the current value of the index (such as that the prime rate is currently 7.5 percent) or the amount of the margin or spread added to the index or formula in setting the applicable rate. A card issuer may not disclose any applicable limitations on rate increases or decreases in the table, such as describing that the rate will not go below a certain rate or higher than a certain rate. (See Samples G–10(B) and G–10(C) for guidance on how to disclose the fact that the applicable rate varies and how it is determined.)

3. *Discounted initial rates.* i. *Immediate proximity.* If the term “introductory” is in the same phrase as the introductory rate, as that term is defined in § 226.16(g)(2)(ii), it will be deemed to be in immediate proximity of the listing. For example, an issuer that uses the phrase “introductory balance transfer APR X percent” has used the word “introductory” within the same phrase as the rate. (See Sample G–10(C) for guidance on how to disclose clearly and conspicuously the expiration date of the introductory rate and the rate that will apply after the introductory rate expires, if an introductory rate is disclosed in the table.)

ii. *Subsequent changes in terms.* The fact that an issuer may reserve the right to change a rate subsequent to account opening, pursuant to the notice requirements of § 226.9(c) and the limitations in § 226.55, does not, by itself, make that rate an introductory rate. For example, assume an issuer discloses an annual percentage rate for purchases of 12.99% but does not specify a time period during which that rate will be in effect. Even if that issuer subsequently increases the annual percentage rate for purchases to 15.99%, pursuant to a change-in-terms notice provided under § 226.9(c), the 12.99% is not an introductory rate.

iii. *More than one introductory rate.* If more than one introductory rate may apply to a particular balance in succeeding periods, the term “introductory” need only be used to describe the first introductory rate. For example, if an issuer offers a rate of 8.99% on purchases for six months, 10.99% on purchases for the following six months, and 14.99% on purchases after the first year, the term “introductory” need only be used to describe the 8.99% rate.

4. *Premium initial rates—subsequent changes in terms.* The fact that an issuer may reserve the right to change a rate subsequent to account opening, pursuant to the notice requirements of § 226.9(c) and the limitations in § 226.55 (as applicable), does not, by itself, make that rate a premium initial rate. For example, assume an issuer discloses an annual percentage rate for purchases of 18.99% but does not specify a time period during which that rate will be in effect. Even if that issuer subsequently reduces the annual percentage rate for purchases to 15.99%, the 18.99% is not a premium initial rate. If the rate decrease is the result of a

change from a non-variable rate to a variable rate or from a variable rate to a non-variable rate, see comments 9(c)(2)(v)-3 and 9(c)(2)(v)-4 for guidance on the notice requirements under § 226.9(c).

5. *Increased penalty rates.* i. *In general.* For rates that are not introductory rates or employee preferential rates, if a rate may increase as a penalty for one or more events specified in the account agreement, such as a late payment or an extension of credit that exceeds the credit limit, the card issuer must disclose the increased rate that would apply, a brief description of the event or events that may result in the increased rate, and a brief description of how long the increased rate will remain in effect. The description of the specific event or events that may result in an increased rate should be brief. For example, if an issuer may increase a rate to the penalty rate because the consumer does not make the minimum payment by 5 p.m., Eastern Time, on its payment due date, the issuer should describe this circumstance in the table as “make a late payment.” Similarly, if an issuer may increase a rate that applies to a particular balance because the account is more than 60 days late, the issuer should describe this circumstance in the table as “make a late payment.” An issuer may not distinguish between the events that may result in an increased rate for existing balances and the events that may result in an increased rate for new transactions. (See Samples G–10(B) and G–10(C) (in the row labeled “Penalty APR and When it Applies”) for additional guidance on the level of detail in which the specific event or events should be described.) The description of how long the increased rate will remain in effect also should be brief. If a card issuer reserves the right to apply the increased rate to any balances indefinitely, to the extent permitted by §§ 226.55(b)(4) and 226.59, the issuer should disclose that the penalty rate may apply indefinitely. The card issuer may not disclose in the table any limitations imposed by §§ 226.55(b)(4) and 226.59 on the duration of increased rates. For example, if the issuer generally provides that the increased rate will apply until the consumer makes twelve timely consecutive required minimum periodic payments, except to the extent that §§ 226.55(b)(4) and 226.59 apply, the issuer should disclose that the penalty rate will apply until the consumer makes twelve consecutive timely minimum payments. (See Samples G–10(B) and G–10(C) (in the row labeled “Penalty APR and When it Applies”) for additional guidance on the level of detail which the issuer should use to describe how long the increased rate will remain in effect.) A card issuer will be deemed to meet the standard to clearly and conspicuously disclose the information required by § 226.5a(b)(1)(iv)(A) if the issuer uses the format shown in Samples G–10(B) and G–10(C) (in the row labeled “Penalty APR and When it Applies”) to disclose this information.

ii. *Introductory rates—general.* An issuer is required to disclose directly beneath the table the circumstances under which an introductory rate, as that term is defined in § 226.16(g)(2)(ii), may be revoked, and the rate that will apply after the revocation. This

information about revocation of an introductory rate and the rate that will apply after revocation must be provided even if the rate that will apply after the introductory rate is revoked is the rate that would have applied at the end of the promotional period. In a variable-rate account, the rate that would have applied at the end of the promotional period is a rate based on the applicable index or formula in accordance with the accuracy requirements set forth in § 226.5a(c)(2) or (e)(4). In describing the rate that will apply after revocation of the introductory rate, if the rate that will apply after revocation of the introductory rate is already disclosed in the table, the issuer is not required to repeat the rate, but may refer to that rate in a clear and conspicuous manner. For example, if the rate that will apply after revocation of an introductory rate is the standard rate that applies to that type of transaction (such as a purchase or balance transfer transaction), and the standard rates are labeled in the table as “standard APRs,” the issuer may refer to the “standard APR” when describing the rate that will apply after revocation of an introductory rate. (See Sample G–10(C) in the disclosure labeled “Loss of Introductory APR” directly beneath the table.) The description of the circumstances in which an introductory rate could be revoked should be brief. For example, if an issuer may increase an introductory rate because the account is more than 60 days late, the issuer should describe this circumstance directly beneath the table as “make a late payment.” In addition, if the circumstances in which an introductory rate could be revoked are already listed elsewhere in the table, the issuer is not required to repeat the circumstances again, but may refer to those circumstances in a clear and conspicuous manner. For example, if the circumstances in which an introductory rate could be revoked are the same as the event or events that may trigger a “penalty rate” as described in § 226.5a(b)(1)(iv)(A), the issuer may refer to the actions listed in the Penalty APR row, in describing the circumstances in which the introductory rate could be revoked. (See Sample G–10(C) in the disclosure labeled “Loss of Introductory APR” directly beneath the table for additional guidance on the level of detail in which to describe the circumstances in which an introductory rate could be revoked.) A card issuer will be deemed to meet the standard to clearly and conspicuously disclose the information required by § 226.5a(b)(1)(iv)(B) if the issuer uses the format shown in Sample G–10(C) to disclose this information.

iii. *Introductory rates—limitations on revocation.* Issuers that are disclosing an introductory rate are prohibited by § 226.55 from increasing or revoking the introductory rate before it expires unless the consumer fails to make a required minimum periodic payment within 60 days after the due date for the payment. In making the required disclosure pursuant to § 226.5a(b)(1)(iv)(B), issuers should describe this circumstance directly beneath the table as “make a late payment.”

iv. *Employee preferential rates.* An issuer is required to disclose directly beneath the table the circumstances under which an employee preferential rate may be revoked,

and the rate that will apply after the revocation. In describing the rate that will apply after revocation of the employee preferential rate, if the rate that will apply after revocation of the employee preferential rate is already disclosed in the table, the issuer is not required to repeat the rate, but may refer to that rate in a clear and conspicuous manner. For example, if the rate that will apply after revocation of an employee preferential rate is the standard rate that applies to that type of transaction (such as a purchase or balance transfer transaction), and the standard rates are labeled in the table as “standard APRs,” the issuer may refer to the “standard APR” when describing the rate that will apply after revocation of an employee preferential rate. The description of the circumstances in which an employee preferential rate could be revoked should be brief. For example, if an issuer may increase an employee preferential rate based upon termination of the employee’s employment relationship with the issuer or a third party, issuers may describe this circumstance as “if your employment with [issuer or third party] ends.”

6. *Rates that depend on consumer’s creditworthiness.* i. *In general.* The card issuer, at its option, may disclose the possible rates that may apply as either specific rates, or a range of rates. For example, if there are three possible rates that may apply (9.99, 12.99 or 17.99 percent), an issuer may disclose specific rates (9.99, 12.99 or 17.99 percent) or a range of rates (9.99 to 17.99 percent). The card issuer may not disclose only the lowest, highest or median rate that could apply. (See Samples G–10(B) and G–10(C) for guidance on how to disclose a range of rates.)

ii. *Penalty rates.* If the rate is a penalty rate, as described in § 226.5a(b)(1)(iv), the card issuer at its option may disclose the highest rate that could apply, instead of disclosing the specific rates or the range of rates that could apply. For example, if the penalty rate could be up to 28.99 percent, but the issuer may impose a penalty rate that is less than that rate depending on factors at the time the penalty rate is imposed, the issuer may disclose the penalty rate as “up to” 28.99 percent. The issuer also must include a statement that the penalty rate for which the consumer may qualify will depend on the consumer’s creditworthiness, and other factors if applicable.

iii. *Other factors.* Section 226.5a(b)(1)(v) applies even if other factors are used in combination with a consumer’s creditworthiness to determine the rate for which a consumer may qualify at account opening. For example, § 226.5a(b)(1)(v) would apply if the issuer considers the type of purchase the consumer is making at the time the consumer opens the account, in combination with the consumer’s creditworthiness, to determine the rate for which the consumer may qualify at account opening. If other factors are considered, the issuer should amend the statement about creditworthiness, to indicate that the rate for which the consumer may qualify at account opening will depend on the consumer’s creditworthiness and other factors.

Nonetheless, § 226.5a(b)(1)(v) does not apply if a consumer’s creditworthiness is not one of the factors that will determine the rate for which the consumer may qualify at account opening (for example, if the rate is based solely on the type of purchase that the consumer is making at the time the consumer opens the account, or is based solely on whether the consumer has other banking relationships with the card issuer).

7. *Rate based on another rate on the account.* In some cases, one rate may be based on another rate on the account. For example, assume that a penalty rate as described in § 226.5a(b)(1)(iv)(A) is determined by adding 5 percentage points to the current purchase rate, which is 10 percent. In this example, the card issuer in disclosing the penalty rate must disclose 15 percent as the current penalty rate. If the purchase rate is a variable rate, then the penalty rate also is a variable rate. In that case, the card issuer also must disclose the fact that the penalty rate may vary and how the rate is determined, such as “This APR may vary with the market based on the Prime Rate.” In describing the penalty rate, the issuer shall not disclose in the table the amount of the margin or spread added to the current purchase rate to determine the penalty rate, such as describing that the penalty rate is determined by adding 5 percentage points to the purchase rate. (See § 226.5a(b)(1)(i) and comment 5a(b)(1)–2 for further guidance on describing a variable rate.)

8. *Rates.* The only rates that shall be disclosed in the table are annual percentage rates determined under § 226.14(b). Periodic rates shall not be disclosed in the table.

9. *Deferred interest or similar transactions.* An issuer offering a deferred interest or similar plan, such as a promotional program that provides that a consumer will not be obligated to pay interest that accrues on a balance if that balance is paid in full prior to the expiration of a specified period of time, may not disclose a 0% rate as the rate applicable to deferred interest or similar transactions if there are any circumstances under which the consumer will be obligated for interest on such transactions for the deferred interest or similar period.

5a(b)(2) *Fees for issuance or availability.*

1. *Membership fees.* Membership fees for opening an account must be disclosed under this paragraph. A membership fee to join an organization that provides a credit or charge card as a privilege of membership must be disclosed only if the card is issued automatically upon membership. Such a fee shall not be disclosed in the table if membership results merely in eligibility to apply for an account.

2. *Enhancements.* Fees for optional services in addition to basic membership privileges in a credit or charge card account (for example, travel insurance or card-registration services) shall not be disclosed in the table if the basic account may be opened without paying such fees. Issuing a card to each primary cardholder (not authorized users) is considered a basic membership privilege and fees for additional cards, beyond the first card on the account, must be disclosed as a fee for issuance or availability.

Thus, a fee to obtain an additional card on the account beyond the first card (so that each cardholder would have his or her own card) must be disclosed in the table as a fee for issuance or availability under § 226.5a(b)(2). This fee must be disclosed even if the fee is optional; that is, if the fee is charged only if the cardholder requests one or more additional cards. (See the available credit disclosure in § 226.5a(b)(14).)

3. *One-time fees.* Disclosure of non-periodic fees is limited to fees related to opening the account, such as one-time membership or participation fees, or an application fee that is excludable from the finance charge under § 226.4(c)(1). The following are examples of fees that shall not be disclosed in the table:

- i. Fees for reissuing a lost or stolen card.
- ii. Statement reproduction fees.

4. *Waived or reduced fees.* If fees required to be disclosed are waived or reduced for a limited time, the introductory fees or the fact of fee waivers may be disclosed in the table in addition to the required fees if the card issuer also discloses how long the reduced fees or waivers will remain in effect in accordance with the requirements of §§ 226.9(c)(2)(v)(B) and 226.55(b)(1).

5. *Periodic fees and one-time fees.* A card issuer disclosing a periodic fee must disclose the amount of the fee, how frequently it will be imposed, and the annualized amount of the fee. A card issuer disclosing a non-periodic fee must disclose that the fee is a one-time fee. (See Sample G–10(C) for guidance on how to meet these requirements.)

5a(b)(3) *Fixed finance charge; minimum interest charge.*

1. *Example of brief statement.* See Samples G–10(B) and G–10(C) for guidance on how to provide a brief description of a minimum interest charge.

2. *Adjustment of \$1.00 threshold amount.* Consistent with § 226.5a(b)(3), the Board will publish adjustments to the \$1.00 threshold amount, as appropriate.

5a(b)(4) *Transaction charges.*

1. *Charges imposed by person other than card issuer.* Charges imposed by a third party, such as a seller of goods, shall not be disclosed in the table under this section; the third party would be responsible for disclosing the charge under § 226.9(d)(1).

2. *Foreign transaction fees.* A transaction charge imposed by the card issuer for the use of the card for purchases includes any fee imposed by the issuer for purchases in a foreign currency or that take place outside the United States or with a foreign merchant. (See comment 4(a)–4 for guidance on when a foreign transaction fee is considered charged by the card issuer.) If an issuer charges the same foreign transaction fee for purchases and cash advances in a foreign currency, or that take place outside the United States or with a foreign merchant, the issuer may disclose this foreign transaction fee as shown in Samples G–10(B) and G–10(C). Otherwise, the issuer must revise the foreign transaction fee language shown in Samples G–10(B) and G–10(C) to disclose clearly and conspicuously the amount of the foreign transaction fee that applies to purchases and the amount of the foreign transaction fee that applies to cash advances.

5a(b)(5) *Grace period.*

1. *How grace period disclosure is made.*

The card issuer must state any conditions on the applicability of the grace period. An issuer, however, may not disclose under § 226.5a(b)(5) the limitations on the imposition of finance charges as a result of a loss of a grace period in § 226.54, or the impact of payment allocation on whether interest is charged on purchases as a result of a loss of a grace period. Some issuers may offer a grace period on all purchases under which interest will not be charged on purchases if the consumer pays the outstanding balance shown on a periodic statement in full by the due date shown on that statement for one or more billing cycles. In these circumstances, § 226.5a(b)(5) requires that the issuer disclose the grace period and the conditions for its applicability using the following language, or substantially similar language, as applicable: “Your due date is [at least] \_\_\_ days after the close of each billing cycle. We will not charge you any interest on purchases if you pay your entire balance by the due date each month.” However, other issuers may offer a grace period on all purchases under which interest may be charged on purchases even if the consumer pays the outstanding balance shown on a periodic statement in full by the due date shown on that statement each billing cycle. In these circumstances, § 226.5a(b)(5) requires the issuer to amend the above disclosure language to describe accurately the conditions on the applicability of the grace period.

2. *No grace period.* The issuer may use the following language to describe that no grace period on any purchases is offered, as applicable: “We will begin charging interest on purchases on the transaction date.”

3. *Grace period on some purchases.* If the issuer provides a grace period on some types of purchases but no grace period on others, the issuer may combine and revise the language in comments 5a(b)(5)–1 and –2 as appropriate to describe to which types of purchases a grace period applies and to which types of purchases no grace period is offered.

5a(b)(6) *Balance computation method.*

1. *Form of disclosure.* In cases where the card issuer uses a balance computation method that is identified by name in § 226.5a(g), the card issuer must disclose below the table only the name of the method. In cases where the card issuer uses a balance computation method that is not identified by name in § 226.5a(g), the disclosure below the table must clearly explain the method in as much detail as set forth in the descriptions of balance methods in § 226.5a(g). The explanation need not be as detailed as that required for the disclosures under § 226.6(b)(4)(i)(D).

2. *Determining the method.* In determining which balance computation method to disclose for purchases, the card issuer must assume that a purchase balance will exist at the end of any grace period. Thus, for example, if the average daily balance method will include new purchases only if purchase balances are not paid within the grace period, the card issuer would disclose the name of the average daily balance method that

includes new purchases. The card issuer must not assume the existence of a purchase balance, however, in making other disclosures under § 226.5a(b).

5a(b)(7) *Statement on charge card payments.*

1. *Applicability and content.* The disclosure that charges are payable upon receipt of the periodic statement is applicable only to charge card accounts. In making this disclosure, the card issuer may make such modifications as are necessary to more accurately reflect the circumstances of repayment under the account. For example, the disclosure might read, “Charges are due and payable upon receipt of the periodic statement and must be paid no later than 15 days after receipt of such statement.”

5a(b)(8) *Cash advance fee.*

1. *Content.* See Samples G–10(B) and G–10(C) for guidance on how to disclose clearly and conspicuously the cash advance fee.

2. *Foreign cash advances.* Cash advance fees required to be disclosed under § 226.5a(b)(8) include any charge imposed by the card issuer for cash advances in a foreign currency or that take place outside the United States or with a foreign merchant. (See comment 4(a)–4 for guidance on when a foreign transaction fee is considered charged by the card issuer.) If an issuer charges the same foreign transaction fee for purchases and cash advances in a foreign currency or that take place outside the United States or with a foreign merchant, the issuer may disclose this foreign transaction fee as shown in Samples G–10(B) and (C). Otherwise, the issuer must revise the foreign transaction fee language shown in Samples G–10(B) and (C) to disclose clearly and conspicuously the amount of the foreign transaction fee that applies to purchases and the amount of the foreign transaction fee that applies to cash advances.

3. *ATM fees.* An issuer is not required to disclose pursuant to § 226.5a(b)(8) any charges imposed on a cardholder by an institution other than the card issuer for the use of the other institution’s ATM in a shared or interchange system.

5a(b)(9) *Late payment fee.*

1. *Applicability.* The disclosure of the fee for a late payment includes only those fees that will be imposed for actual, unanticipated late payments. (See the commentary to § 226.4(c)(2) for additional guidance on late payment fees. See Samples G–10(B) and G–10(C) for guidance on how to disclose clearly and conspicuously the late payment fee.)

5a(b)(10) *Over-the-limit fee.*

1. *Applicability.* The disclosure of fees for exceeding a credit limit does not include fees for other types of default or for services related to exceeding the limit. For example, no disclosure is required of fees for reinstating credit privileges or fees for the dishonor of checks on an account that, if paid, would cause the credit limit to be exceeded. (See Samples G–10(B) and G–10(C) for guidance on how to disclose clearly and conspicuously the over-the-limit fee.)

5a(b)(13) *Required insurance, debt cancellation, or debt suspension coverage.*

1. *Content.* See Sample G–10(B) for guidance on how to comply with the requirements in § 226.5a(b)(13).

5a(b)(14) Available credit.

1. Calculating available credit. If the 15 percent threshold test is met, the issuer must disclose the available credit excluding optional fees, and the available credit including optional fees. In calculating the available credit to disclose in the table, the issuer must consider all fees for the issuance or availability of credit described in § 226.5a(b)(2), and any security deposit, that will be imposed and charged to the account when the account is opened, such as one-time issuance and set-up fees. For example, in calculating the available credit, issuers must consider the first year's annual fee and the first month's maintenance fee (as applicable) if they are charged to the account on the first billing statement. In calculating the amount of the available credit including optional fees, if optional fees could be charged multiple times, the issuer shall assume that the optional fee is only imposed once. For example, if an issuer charges a fee for each additional card issued on the account, the issuer in calculating the amount of the available credit including optional fees may assume that the cardholder requests only one additional card. In disclosing the available credit, the issuer shall round down the available credit amount to the nearest whole dollar.

2. Content. See Sample G-10(C) for guidance on how to provide the disclosure required by § 226.5a(b)(14) clearly and conspicuously.

5a(b)(15) Web site reference.

1. Content. See Samples G-10(B) and G-10(C) for guidance on disclosing a reference to the Web site established by the Board and a statement that consumers may obtain on the Web site information about shopping for and using credit card accounts.

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§ 226.6—Account-Opening Disclosures

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6(b) Rules affecting open-end (not home-secured) plans.

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6(b)(2) Required disclosures for account-opening table for open-end (not home-secured) plans.

6(b)(2)(iii) Fixed finance charge; minimum interest charge.

1. Example of brief statement. See Samples G-17(B), G-17(C), and G-17(D) for guidance on how to provide a brief description of a minimum interest charge.

6(b)(2)(v) Grace period.

1. Grace period. Creditors must state any conditions on the applicability of the grace period. A creditor, however, may not disclose under § 226.6(b)(2)(v) the limitations on the imposition of finance charges as a result of a loss of a grace period in § 226.54, or the impact of payment allocation on whether interest is charged on transactions as a result of a loss of a grace period. Some creditors may offer a grace period on all types of transactions under which interest will not be charged on transactions if the consumer pays the outstanding balance shown on a periodic statement in full by the due date shown on that statement for one or more billing cycles. In these circumstances, § 226.6(b)(2)(v) requires that the creditor disclose the grace

period and the conditions for its applicability using the following language, or substantially similar language, as applicable: "Your due date is [at least] \_\_\_ days after the close of each billing cycle. We will not charge you any interest on your account if you pay your entire balance by the due date each month." However, other creditors may offer a grace period on all types of transactions under which interest may be charged on transactions even if the consumer pays the outstanding balance shown on a periodic statement in full by the due date shown on that statement each billing cycle. In these circumstances, § 226.6(b)(2)(v) requires the creditor to amend the above disclosure language to describe accurately the conditions on the applicability of the grace period.

2. No grace period. Creditors may use the following language to describe that no grace period is offered, as applicable: "We will begin charging interest on [applicable transactions] on the transaction date."

3. Grace period on some features. Some creditors do not offer a grace period on cash advances and balance transfers, but offer a grace period for all purchases under which interest will not be charged on purchases if the consumer pays the outstanding balance shown on a periodic statement in full by the due date shown on that statement for one or more billing cycles. In these circumstances, § 226.6(b)(2)(v) requires that the creditor disclose the grace period for purchases and the conditions for its applicability, and the lack of a grace period for cash advances and balance transfers using the following language, or substantially similar language, as applicable: "Your due date is [at least] \_\_\_ days after the close of each billing cycle. We will not charge you any interest on purchases if you pay your entire balance by the due date each month. We will begin charging interest on cash advances and balance transfers on the transaction date." However, other creditors may offer a grace period on all purchases under which interest may be charged on purchases even if the consumer pays the outstanding balance shown on a periodic statement in full by the due date shown on that statement each billing cycle. In these circumstances, § 226.6(a)(2)(v) requires the creditor to amend the above disclosure language to describe accurately the conditions on the applicability of the grace period. Also, some creditors may not offer a grace period on cash advances and balance transfers, and will begin charging interest on these transactions from a date other than the transaction date, such as the posting date. In these circumstances, § 226.6(a)(2)(v) requires the creditor to amend the above disclosure language to be accurate.

6(b)(2)(vi) Balance computation method.

1. Use of same balance computation method for all features. In cases where the balance for each feature is computed using the same balance computation method, a single identification of the name of the balance computation method is sufficient. In this case, a creditor may use an appropriate name listed in § 226.5a(g) (e.g., "average daily balance (including new purchases)") to satisfy the requirement to disclose the name of the method for all features on the account,

even though the name only refers to purchases. For example, if a creditor uses the average daily balance method including new transactions for all features, a creditor may use the name "average daily balance (including new purchases)" listed in § 226.5a(g)(i) to satisfy the requirement to disclose the name of the balance computation method for all features. As an alternative, in this situation, a creditor may revise the balance computation names listed in § 226.5a(g) to refer more broadly to all new credit transactions, such as using the language "new transactions" or "current transactions" (e.g., "average daily balance (including new transactions)"), rather than simply referring to new purchases when the same method is used to calculate the balances for all features of the account. See Samples G-17(B) and G-17(C) for guidance on how to disclose the balance computation method where the same method is used for all features on the account.

2. Use of balance computation names in § 226.5a(g) for balances other than purchases. The names of the balance computation methods listed in § 226.5a(g) describe balance computation methods for purchases. When a creditor is disclosing the name of the balance computation methods separately for each feature, in using the names listed in § 226.5a(g) to satisfy the requirements of § 226.6(b)(2)(vi) for features other than purchases, a creditor must revise the names listed in § 226.5a(g) to refer to the other features. For example, when disclosing the name of the balance computation method applicable to cash advances, a creditor must revise the name listed in § 226.5a(g)(i) to disclose it as "average daily balance (including new cash advances)" when the balance for cash advances is figured by adding the outstanding balance (including new cash advances and deducting payments and credits) for each day in the billing cycle, and then dividing by the number of days in the billing cycle. Similarly, a creditor must revise the name listed in § 226.5a(g)(ii) to disclose it as "average daily balance (excluding new cash advances)" when the balance for cash advances is figured by adding the outstanding balance (excluding new cash advances and deducting payments and credits) for each day in the billing cycle, and then dividing by the number of days in the billing cycle. See comment 6(b)(2)(vi)-1 for guidance on the use of one balance computation name when the same balance computation method is used for all features on the account.

6(b)(2)(xiii) Available credit.

1. Right to reject the plan. Creditors may use the following language to describe consumers' right to reject a plan after receiving account-opening disclosures: "You may still reject this plan, provided that you have not yet used the account or paid a fee after receiving a billing statement. If you do reject the plan, you are not responsible for any fees or charges."

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§ 226.7—Periodic Statement

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7(b) Rules affecting open-end (not home-secured) plans.



1. *Deferred interest or similar transactions.* Creditors offer a variety of payment plans for purchases that permit consumers to avoid interest charges if the purchase balance is paid in full by a certain date. “Deferred interest” has the same meaning as in § 226.16(h)(2) and associated commentary. The following provides guidance for a deferred interest or similar plan where, for example, no interest charge is imposed on a \$500 purchase made in January if the \$500 balance is paid by July 31.

i. *Annual percentage rates.* Under § 226.7(b)(4), creditors must disclose each annual percentage rate that may be used to compute the interest charge. Under some plans with a deferred interest or similar feature, if the deferred interest balance is not paid by a certain date, July 31 in this example, interest charges applicable to the billing cycles between the date of purchase in January and July 31 may be imposed. Annual percentage rates that may apply to the deferred interest balance (\$500 in this example) if the balance is not paid in full by July 31 must appear on periodic statements for the billing cycles between the date of purchase and July 31. However, if the consumer does not pay the deferred interest balance by July 31, the creditor is not required to identify, on the periodic statement disclosing the interest charge for the deferred interest balance, annual percentage rates that have been disclosed in previous billing cycles between the date of purchase and July 31.

ii. *Balances subject to periodic rates.* Under § 226.7(b)(5), creditors must disclose the balances subject to interest during a billing cycle. The deferred interest balance (\$500 in this example) is not subject to interest for billing cycles between the date of purchase and July 31 in this example. Periodic statements sent for those billing cycles should not include the deferred interest balance in the balance disclosed under § 226.7(b)(5). This amount must be separately disclosed on periodic statements and identified by a term other than the term used to identify the balance disclosed under § 226.7(b)(5) (such as “deferred interest balance”). During any billing cycle in which an interest charge on the deferred interest balance is debited to the account, the balance disclosed under § 226.7(b)(5) should include the deferred interest balance for that billing cycle.

iii. *Amount of interest charge.* Under § 226.7(b)(6)(ii), creditors must disclose interest charges imposed during a billing cycle. For some deferred interest purchases, the creditor may impose interest from the date of purchase if the deferred interest balance (\$500 in this example) is not paid in full by July 31 in this example, but otherwise will not impose interest for billing cycles between the date of purchase and July 31. Periodic statements for billing cycles preceding July 31 in this example should not include in the interest charge disclosed under § 226.7(b)(6)(ii) the amounts a consumer may owe if the deferred interest balance is not paid in full by July 31. In this example, the February periodic statement should not identify as interest charges interest attributable to the \$500 January

purchase. This amount must be separately disclosed on periodic statements and identified by a term other than “interest charge” (such as “contingent interest charge” or “deferred interest charge”). The interest charge on a deferred interest balance should be reflected on the periodic statement under § 226.7(b)(6)(ii) for the billing cycle in which the interest charge is debited to the account.

iv. *Due date to avoid obligation for finance charges under a deferred interest or similar program.* Section 226.7(b)(14) requires disclosure on periodic statements of the date by which any outstanding balance subject to a deferred interest or similar program must be paid in full in order to avoid the obligation for finance charges on such balance. This disclosure must appear on the front of any page of each periodic statement issued during the deferred interest period beginning with the first periodic statement issued during the deferred interest period that reflects the deferred interest or similar transaction.

*7(b)(1) Previous balance.*

1. *Credit balances.* If the previous balance is a credit balance, it must be disclosed in such a way so as to inform the consumer that it is a credit balance, rather than a debit balance.

2. *Multifaceted plans.* In a multifaceted plan, the previous balance may be disclosed either as an aggregate balance for the account or as separate balances for each feature (for example, a previous balance for purchases and a previous balance for cash advances). If separate balances are disclosed, a total previous balance is optional.

3. *Accrued finance charges allocated from payments.* Some open-end credit plans provide that the amount of the finance charge that has accrued since the consumer’s last payment is directly deducted from each new payment, rather than being separately added to each statement and reflected as an increase in the obligation. In such a plan, the previous balance need not reflect finance charges accrued since the last payment.

*7(b)(2) Identification of transactions.*

1. *Multifaceted plans.* Creditors may, but are not required to, arrange transactions by feature (such as disclosing purchase transactions separately from cash advance transactions). Pursuant to § 226.7(b)(6), however, creditors must group all fees and all interest separately from transactions and may not disclose any fees or interest charges with transactions.

2. *Automated teller machine (ATM) charges imposed by other institutions in shared or interchange systems.* A charge imposed on the cardholder by an institution other than the card issuer for the use of the other institution’s ATM in a shared or interchange system and included by the terminal-operating institution in the amount of the transaction need not be separately disclosed on the periodic statement.

*7(b)(3) Credits.*

1. *Identification—sufficiency.* The creditor need not describe each credit by type (returned merchandise, rebate of finance charge, etc.)—“credit” would suffice—except if the creditor is using the periodic statement to satisfy the billing-error correction notice requirement. (See the commentary to

§ 226.13(e) and (f).) Credits may be distinguished from transactions in any way that is clear and conspicuous, for example, by use of debit and credit columns or by use of plus signs and/or minus signs.

2. *Date.* If only one date is disclosed (that is, the crediting date as required by the regulation), no further identification of that date is necessary. More than one date may be disclosed for a single entry, as long as it is clear which date represents the date on which credit was given.

3. *Totals.* A total of amounts credited during the billing cycle is not required.

*7(b)(4) Periodic rates.*

1. *Disclosure of periodic interest rates—whether or not actually applied.* Except as provided in § 226.7(b)(4)(ii), any periodic interest rate that may be used to compute finance charges, expressed as and labeled “Annual Percentage Rate,” must be disclosed whether or not it is applied during the billing cycle. For example:

i. If the consumer’s account has both a purchase feature and a cash advance feature, the creditor must disclose the annual percentage rate for each, even if the consumer only makes purchases on the account during the billing cycle.

ii. If the annual percentage rate varies (such as when it is tied to a particular index), the creditor must disclose each annual percentage rate in effect during the cycle for which the statement was issued.

2. *Disclosure of periodic interest rates required only if imposition possible.* With regard to the periodic interest rate disclosure (and its corresponding annual percentage rate), only rates that could have been imposed during the billing cycle reflected on the periodic statement need to be disclosed. For example:

i. If the creditor is changing annual percentage rates effective during the next billing cycle (either because it is changing terms or because of a variable-rate plan), the annual percentage rates required to be disclosed under § 226.7(b)(4) are only those in effect during the billing cycle reflected on the periodic statement. For example, if the annual percentage rate applied during May was 18%, but the creditor will increase the rate to 21% effective June 1, 18% is the only required disclosure under § 226.7(b)(4) for the periodic statement reflecting the May account activity.

ii. If the consumer has an overdraft line that might later be expanded upon the consumer’s request to include secured advances, the rates for the secured advance feature need not be given until such time as the consumer has requested and received access to the additional feature.

iii. If annual percentage rates applicable to a particular type of transaction changed after a certain date and the old rate is only being applied to transactions that took place prior to that date, the creditor need not continue to disclose the old rate for those consumers that have no outstanding balances to which that rate could be applied.

3. *Multiple rates—same transaction.* If two or more periodic rates are applied to the same balance for the same type of transaction (for example, if the interest charge consists of a monthly periodic interest rate of 1.5%

applied to the outstanding balance and a required credit life insurance component calculated at 0.1% per month on the same outstanding balance), creditors must disclose the periodic interest rate, expressed as an 18% annual percentage rate and the range of balances to which it is applicable. Costs attributable to the credit life insurance component must be disclosed as a fee under § 226.7(b)(6)(iii).

4. *Fees.* Creditors that identify fees in accordance with § 226.7(b)(6)(iii) need not identify the periodic rate at which a fee would accrue if the fee remains unpaid. For example, assume a fee is imposed for a late payment in the previous cycle and that the fee, unpaid, would be included in the purchases balance and accrue interest at the rate for purchases. The creditor need not separately disclose that the purchase rate applies to the portion of the purchases balance attributable to the unpaid fee.

5. *Ranges of balances.* See comment 6(b)(4)(i)(B)–1. A creditor is not required to adjust the range of balances disclosure to reflect the balance below which only a minimum charge applies.

6. *Deferred interest transactions.* See comment 7(b)–1.i.

7(b)(5) *Balance on which finance charge computed.*

1. *Split rates applied to balance ranges.* If split rates were applied to a balance because different portions of the balance fall within two or more balance ranges, the creditor need not separately disclose the portions of the balance subject to such different rates since the range of balances to which the rates apply has been separately disclosed. For example, a creditor could disclose a balance of \$700 for purchases even though a monthly periodic rate of 1.5% applied to the first \$500, and a monthly periodic rate of 1% to the remainder. This option to disclose a combined balance does not apply when the interest charge is computed by applying the split rates to each day's balance (in contrast, for example, to applying the rates to the average daily balance). In that case, the balances must be disclosed using any of the options that are available if two or more daily rates are imposed. (See comment 7(b)(5)–4.)

2. *Monthly rate on average daily balance.* Creditors may apply a monthly periodic rate to an average daily balance.

3. *Multifeatured plans.* In a multifeatured plan, the creditor must disclose a separate balance (or balances, as applicable) to which a periodic rate was applied for each feature. Separate balances are not required, however, merely because a grace period is available for some features but not others. A total balance for the entire plan is optional. This does not affect how many balances the creditor must disclose—or may disclose—within each feature. (See, for example, comments 7(b)(5)–4 and 7(b)(4)–5.)

4. *Daily rate on daily balance.* i. If a finance charge is computed on the balance each day by application of one or more daily periodic interest rates, the balance on which the interest charge was computed may be disclosed in any of the following ways for each feature:

ii. If a single daily periodic interest rate is imposed, the balance to which it is applicable may be stated as:

A. A balance for each day in the billing cycle.

B. A balance for each day in the billing cycle on which the balance in the account changes.

C. The sum of the daily balances during the billing cycle.

D. The average daily balance during the billing cycle, in which case the creditor may, at its option, explain that the average daily balance is or can be multiplied by the number of days in the billing cycle and the periodic rate applied to the product to determine the amount of interest.

iii. If two or more daily periodic interest rates may be imposed, the balances to which the rates are applicable may be stated as:

A. A balance for each day in the billing cycle.

B. A balance for each day in the billing cycle on which the balance in the account changes.

C. Two or more average daily balances, each applicable to the daily periodic interest rates imposed for the time that those rates were in effect. The creditor may, at its option, explain that interest is or may be determined by (1) multiplying each of the average balances by the number of days in the billing cycle (or if the daily rate varied during the cycle, by multiplying by the number of days the applicable rate was in effect), (2) multiplying each of the results by the applicable daily periodic rate, and (3) adding these products together.

5. *Information to compute balance.* In connection with disclosing the interest charge balance, the creditor need not give the consumer all of the information necessary to compute the balance if that information is not otherwise required to be disclosed. For example, if current purchases are included from the date they are posted to the account, the posting date need not be disclosed.

6. *Non-deduction of credits.* The creditor need not specifically identify the total dollar amount of credits not deducted in computing the finance charge balance. Disclosure of the amount of credits not deducted is accomplished by listing the credits (§ 226.7(b)(3)) and indicating which credits will not be deducted in determining the balance (for example, “credits after the 15th of the month are not deducted in computing the interest charge.”).

7. *Use of one balance computation method explanation when multiple balances disclosed.* Sometimes the creditor will disclose more than one balance to which a periodic rate was applied, even though each balance was computed using the same balance computation method. For example, if a plan involves purchases and cash advances that are subject to different rates, more than one balance must be disclosed, even though the same computation method is used for determining the balance for each feature. In these cases, one explanation or a single identification of the name of the balance computation method is sufficient. Sometimes the creditor separately discloses the portions of the balance that are subject to different rates because different portions of the balance fall within two or more balance ranges, even when a combined balance disclosure would be permitted under

comment 7(b)(5)–1. In these cases, one explanation or a single identification of the name of the balance computation method is also sufficient (assuming, of course, that all portions of the balance were computed using the same method). In these cases, a creditor may use an appropriate name listed in § 226.5a(g) (e.g., “average daily balance (including new purchases)”) as the single identification of the name of the balance computation method applicable to all features, even though the name only refers to purchases. For example, if a creditor uses the average daily balance method including new transactions for all features, a creditor may use the name “average daily balance (including new purchases)” listed in § 226.5a(g)(i) to satisfy the requirement to disclose the name of the balance computation method for all features. As an alternative, in this situation, a creditor may revise the balance computation names listed in § 226.5a(g) to refer more broadly to all new credit transactions, such as using the language “new transactions” or “current transactions” (e.g., “average daily balance (including new transactions)”), rather than simply referring to new purchases, when the same method is used to calculate the balances for all features of the account.

8. *Use of balance computation names in § 226.5a(g) for balances other than purchases.* The names of the balance computation methods listed in § 226.5a(g) describe balance computation methods for purchases. When a creditor is disclosing the name of the balance computation methods separately for each feature, in using the names listed in § 226.5a(g) to satisfy the requirements of § 226.7(b)(5) for features other than purchases, a creditor must revise the names listed in § 226.5a(g) to refer to the other features. For example, when disclosing the name of the balance computation method applicable to cash advances, a creditor must revise the name listed in § 226.5a(g)(i) to disclose it as “average daily balance (including new cash advances)” when the balance for cash advances is figured by adding the outstanding balance (including new cash advances and deducting payments and credits) for each day in the billing cycle, and then dividing by the number of days in the billing cycle. Similarly, a creditor must revise the name listed in § 226.5a(g)(ii) to disclose it as “average daily balance (excluding new cash advances)” when the balance for cash advances is figured by adding the outstanding balance (excluding new cash advances and deducting payments and credits) for each day in the billing cycle, and then dividing by the number of days in the billing cycle. See comment 7(b)(5)–7 for guidance on the use of one balance computation method explanation or name when multiple balances are disclosed.

7(b)(6) *Charges imposed.*

1. *Examples of charges.* See commentary to § 226.6(b)(3).

2. *Fees.* Costs attributable to periodic rates other than interest charges shall be disclosed as a fee. For example, if a consumer obtains credit life insurance that is calculated at 0.1% per month on an outstanding balance and a monthly interest rate of 1.5% applies to the same balance, the creditor must

disclose the dollar cost attributable to interest as an "interest charge" and the credit insurance cost as a "fee."

3. *Total fees and interest charged for calendar year to date.*

i. *Monthly statements.* Some creditors send monthly statements but the statement periods do not coincide with the calendar month. For creditors sending monthly statements, the following comply with the requirement to provide calendar year-to-date totals.

A. A creditor may disclose calendar-year-to-date totals at the end of the calendar year by separately aggregating finance charges attributable to periodic interest rates and fees for 12 monthly cycles, starting with the period that begins during January and finishing with the period that begins during December. For example, if statement periods begin on the 10th day of each month, the statement covering December 10, 2011 through January 9, 2012, may disclose the separate year-to-date totals for interest charged and fees imposed from January 10, 2011, through January 9, 2012. Alternatively, the creditor could provide a statement for the cycle ending January 9, 2012, showing the separate year-to-date totals for interest charged and fees imposed January 1, 2011, through December 31, 2011.

B. A creditor may disclose calendar-year-to-date totals at the end of the calendar year by separately aggregating finance charges attributable to periodic interest rates and fees for 12 monthly cycles, starting with the period that begins during December and finishing with the period that begins during November. For example, if statement periods begin on the 10th day of each month, the statement covering November 10, 2011 through December 9, 2011, may disclose the separate year-to-date totals for interest charged and fees imposed from December 10, 2010, through December 9, 2011.

ii. *Quarterly statements.* Creditors issuing quarterly statements may apply the guidance set forth for monthly statements to comply with the requirement to provide calendar year-to-date totals on quarterly statements.

4. *Minimum charge in lieu of interest.* A minimum charge imposed if a charge would otherwise have been determined by applying a periodic rate to a balance except for the fact that such charge is smaller than the minimum must be disclosed as a fee. For example, assume a creditor imposes a minimum charge of \$1.50 in lieu of interest if the calculated interest for a billing period is less than that minimum charge. If the interest calculated on a consumer's account for a particular billing period is 50 cents, the minimum charge of \$1.50 would apply. In this case, the entire \$1.50 would be disclosed as a fee; the periodic statement would reflect the \$1.50 as a fee, and \$0 in interest.

5. *Adjustments to year-to-date totals.* In some cases, a creditor may provide a statement for the current period reflecting that fees or interest charges imposed during a previous period were waived or reversed and credited to the account. Creditors may, but are not required to, reflect the adjustment in the year-to-date totals, nor, if an adjustment is made, to provide an explanation about the reason for the adjustment. Such adjustments should not

affect the total fees or interest charges imposed for the current statement period.

6. *Acquired accounts.* An institution that acquires an account or plan must include, as applicable, fees and charges imposed on the account or plan prior to the acquisition in the aggregate disclosures provided under § 226.7(b)(6) for the acquired account or plan. Alternatively, the institution may provide separate totals reflecting activity prior and subsequent to the account or plan acquisition. For example, a creditor that acquires an account or plan on August 12 of a given calendar year may provide one total for the period from January 1 to August 11 and a separate total for the period beginning on August 12.

7. *Account upgrades.* A creditor that upgrades, or otherwise changes, a consumer's plan to a different open-end credit plan must include, as applicable, fees and charges imposed for that portion of the calendar year prior to the upgrade or change in the consumer's plan in the aggregate disclosures provided pursuant to § 226.7(b)(6) for the new plan. For example, assume a consumer has incurred \$125 in fees for the calendar year to date for a retail credit card account, which is then replaced by a cobranded credit card account also issued by the creditor. In this case, the creditor must reflect the \$125 in fees incurred prior to the replacement of the retail credit card account in the calendar year-to-date totals provided for the cobranded credit card account. Alternatively, the institution may provide two separate totals reflecting activity prior and subsequent to the plan upgrade or change.

7(b)(7) *Change-in-terms and increased penalty rate summary for open-end (not home-secured) plans.*

1. *Location of summary tables.* If a change-in-terms notice required by § 226.9(c)(2) is provided on or with a periodic statement, a tabular summary of key changes must appear on the front of the statement. Similarly, if a notice of a rate increase due to delinquency or default or as a penalty required by § 226.9(g)(1) is provided on or with a periodic statement, information required to be provided about the increase, presented in a table, must appear on the front of the statement.

7(b)(8) *Grace period.*

1. *Terminology.* In describing the grace period, the language used must be consistent with that used on the account-opening disclosure statement. (See § 226.5(a)(2)(i).)

2. *Deferred interest transactions.* See comment 7(b)–1.iv.

3. *Limitation on the imposition of finance charges in § 226.54.* Section 226.7(b)(8) does not require a card issuer to disclose the limitations on the imposition of finance charges as a result of a loss of a grace period in § 226.54, or the impact of payment allocation on whether interest is charged on transactions as a result of a loss of a grace period.

7(b)(9) *Address for notice of billing errors.*

1. *Terminology.* The periodic statement should indicate the general purpose for the address for billing-error inquiries, although a detailed explanation or particular wording is not required.

2. *Telephone number.* A telephone number, e-mail address, or Web site location

may be included, but the mailing address for billing-error inquiries, which is the required disclosure, must be clear and conspicuous. The address is deemed to be clear and conspicuous if a precautionary instruction is included that telephoning or notifying the creditor by e-mail or Web site will not preserve the consumer's billing rights, unless the creditor has agreed to treat billing error notices provided by electronic means as written notices, in which case the precautionary instruction is required only for telephoning.

7(b)(10) *Closing date of billing cycle; new balance.*

1. *Credit balances.* See comment 7(b)(1)–1.

2. *Multifeatured plans.* In a multifeatured plan, the new balance may be disclosed for each feature or for the plan as a whole. If separate new balances are disclosed, a total new balance is optional.

3. *Accrued finance charges allocated from payments.* Some plans provide that the amount of the finance charge that has accrued since the consumer's last payment is directly deducted from each new payment, rather than being separately added to each statement and therefore reflected as an increase in the obligation. In such a plan, the new balance need not reflect finance charges accrued since the last payment.

7(b)(11) *Due date; late payment costs.*

1. *Informal periods affecting late payments.* Although the terms of the account agreement may provide that a card issuer may assess a late payment fee if a payment is not received by a certain date, the card issuer may have an informal policy or practice that delays the assessment of the late payment fee for payments received a brief period of time after the date upon which a card issuer has the contractual right to impose the fee. A card issuer must disclose the due date according to the legal obligation between the parties, and need not consider the end of an informal "courtesy period" as the due date under § 226.7(b)(11).

2. *Assessment of late payment fees.* Some state or other laws require that a certain number of days must elapse following a due date before a late payment fee may be imposed. In addition, a card issuer may be restricted by the terms of the account agreement from imposing a late payment fee until a payment is late for a certain number of days following a due date. For example, assume a payment is due on March 10 and the account agreement or state law provides that a late payment fee cannot be assessed before March 21. A card issuer must disclose the due date under the terms of the legal obligation (March 10 in this example), and not a date different than the due date, such as when the card issuer is restricted by the account agreement or state or other law from imposing a late payment fee unless a payment is late for a certain number of days following the due date (March 21 in this example). Consumers' rights under state law to avoid the imposition of late payment fees during a specified period following a due date are unaffected by the disclosure requirement. In this example, the card issuer would disclose March 10 as the due date for purposes of § 226.7(b)(11), but could not, under state law, assess a late payment fee before March 21.

3. *Fee or rate triggered by multiple events.* If a late payment fee or penalty rate is triggered after multiple events, such as two late payments in six months, the card issuer may, but is not required to, disclose the late payment and penalty rate disclosure each month. The disclosures must be included on any periodic statement for which a late payment could trigger the late payment fee or penalty rate, such as after the consumer made one late payment in this example. For example, if a cardholder has already made one late payment, the disclosure must be on each statement for the following five billing cycles.

4. *Range of late fees or penalty rates.* A card issuer that imposes a range of late payment fees or rates on a credit card account under an open-end (not home-secured) consumer credit plan may state the highest fee or rate along with an indication lower fees or rates could be imposed. For example, a phrase indicating the late payment fee could be "up to \$29" complies with this requirement.

5. *Penalty rate in effect.* If the highest penalty rate has previously been triggered on an account, the card issuer may, but is not required to, delete the amount of the penalty rate and the warning that the rate may be imposed for an untimely payment, as not applicable. Alternatively, the card issuer may, but is not required to, modify the language to indicate that the penalty rate has been increased due to previous late payments (if applicable).

6. *Same day each month.* The requirement that the due date be the same day each month means that the due date must generally be the same numerical date. For example, a consumer's due date could be the 25th of every month. In contrast, a due date that is the same relative date but not numerical date each month, such as the third Tuesday of the month, generally would not comply with this requirement. However, a consumer's due date may be the last day of each month, even though that date will not be the same numerical date. For example, if a consumer's due date is the last day of each month, it will fall on February 28th (or February 29th in a leap year) and on August 31st.

7. *Change in due date.* A creditor may adjust a consumer's due date from time to time provided that the new due date will be the same numerical date each month on an ongoing basis. For example, a creditor may choose to honor a consumer's request to change from a due date that is the 20th of each month to the 5th of each month, or may choose to change a consumer's due date from time to time for operational reasons. See comment 2(a)(4)–3 for guidance on transitional billing cycles.

8. *Billing cycles longer than one month.* The requirement that the due date be the same day each month does not prohibit billing cycles that are two or three months, provided that the due date for each billing cycle is on the same numerical date of the month. For example, a creditor that establishes two-month billing cycles could send a consumer periodic statements disclosing due dates of January 25, March 25, and May 25.

9. *Payment due date when the creditor does not accept or receive payments by mail.*

If the due date in a given month falls on a day on which the creditor does not receive or accept payments by mail and the creditor is required to treat a payment received the next business day as timely pursuant to § 226.10(d), the creditor must disclose the due date according to the legal obligation between the parties, not the date as of which the creditor is permitted to treat the payment as late. For example, assume that the consumer's due date is the 4th of every month and the creditor does not accept or receive payments by mail on Thursday, July 4. Pursuant to § 226.10(d), the creditor may not treat a mailed payment received on the following business day, Friday, July 5, as late for any purpose. The creditor must nonetheless disclose July 4 as the due date on the periodic statement and may not disclose a July 5 due date.

*7(b)(12) Repayment disclosures.*

1. *Rounding.* In disclosing on the periodic statement the minimum payment total cost estimate, the estimated monthly payment for repayment in 36 months, the total cost estimate for repayment in 36 months, and the savings estimate for repayment in 36 months under § 226.7(b)(12)(i) or (b)(12)(ii) as applicable, a card issuer, at its option, must either round these disclosures to the nearest whole dollar or to the nearest cent. Nonetheless, an issuer's rounding for all of these disclosures must be consistent. An issuer may round all of these disclosures to the nearest whole dollar when disclosing them on the periodic statement, or may round all of these disclosures to the nearest cent. An issuer may not, however, round some of the disclosures to the nearest whole dollar, while rounding other disclosures to the nearest cent.

*Paragraph 7(b)(12)(i)(F).*

1. *Minimum payment repayment estimate disclosed on the periodic statement is three years or less.* Section 226.7(b)(12)(i)(F)(2)(i) provides that a credit card issuer is not required to provide the disclosures related to repayment in 36 months if the minimum payment repayment estimate disclosed under § 226.7(b)(12)(i)(B) after rounding is 3 years or less. For example, if the minimum payment repayment estimate is 2 years 6 months to 3 years 5 months, issuers would be required under § 226.7(b)(12)(i)(B) to disclose that it would take 3 years to pay off the balance in full if making only the minimum payment. In these cases, an issuer would not be required to disclose the 36-month disclosures on the periodic statement because the minimum payment repayment estimate disclosed to the consumer on the periodic statement (after rounding) is 3 years or less.

*7(b)(12)(iv) Provision of information about credit counseling services.*

1. *Approved organizations.* Section 226.7(b)(12)(iv)(A) requires card issuers to provide information regarding at least three organizations that have been approved by the United States Trustee or a bankruptcy administrator pursuant to 11 U.S.C. 111(a)(1) to provide credit counseling services in, at the card issuer's option, either the state in which the billing address for the account is located or the state specified by the consumer. A card issuer does not satisfy the

requirements in § 226.7(b)(12)(iv)(A) by providing information regarding providers that have been approved pursuant to 11 U.S.C. 111(a)(2) to offer personal financial management courses.

2. *Information regarding approved organizations.* i. *Provision of information obtained from United States Trustee or bankruptcy administrator.* A card issuer complies with the requirements of § 226.7(b)(12)(iv)(A) if, through the toll-free number disclosed pursuant to § 226.7(b)(12)(i) or (b)(12)(ii), it provides the consumer with information obtained from the United States Trustee or a bankruptcy administrator, such as information obtained from the Web site operated by the United States Trustee. Section 226.7(b)(12)(iv)(A) does not require a card issuer to provide information that is not available from the United States Trustee or a bankruptcy administrator. If, for example, the Web site address for an organization approved by the United States Trustee is not available from the Web site operated by the United States Trustee, a card issuer is not required to provide a Web site address for that organization. However, § 226.7(b)(12)(iv)(B) requires the card issuer to, at least annually, update the information it provides for consistency with the information provided by the United States Trustee or a bankruptcy administrator.

ii. *Provision of information consistent with request of approved organization.* If requested by an approved organization, a card issuer may at its option provide, in addition to the name of the organization obtained from the United States Trustee or a bankruptcy administrator, another name used by that organization through the toll-free number disclosed pursuant to § 226.7(b)(12)(i) or (b)(12)(ii). In addition, if requested by an approved organization, a card issuer may at its option provide through the toll-free number disclosed pursuant to § 226.7(b)(12)(i) or (b)(12)(ii) a street address, telephone number, or Web site address for the organization that is different than the street address, telephone number, or Web site address obtained from the United States Trustee or a bankruptcy administrator. However, if requested by an approved organization, a card issuer must not provide information regarding that organization through the toll-free number disclosed pursuant to § 226.7(b)(12)(i) or (b)(12)(ii).

iii. *Information regarding approved organizations that provide credit counseling services in a language other than English.* A card issuer may at its option provide through the toll-free number disclosed pursuant to § 226.7(b)(12)(i) or (b)(12)(ii) information regarding approved organizations that provide credit counseling services in languages other than English. In the alternative, a card issuer may at its option state that such information is available from the Web site operated by the United States Trustee. Disclosing this Web site address does not by itself constitute a statement that organizations have been approved by the United States Trustee for purposes of comment 7(b)(12)(iv)–2.iv.

iv. *Statements regarding approval by the United States Trustee or a bankruptcy*

*administrator.* Section 226.7(b)(12)(iv) does not require a card issuer to disclose through the toll-free number disclosed pursuant to § 226.7(b)(12)(i) or (b)(12)(ii) that organizations have been approved by the United States Trustee or a bankruptcy administrator. However, if a card issuer chooses to make such a disclosure, § 226.7(b)(12)(iv) requires that the card issuer also disclose that:

A. The United States Trustee or a bankruptcy administrator has determined that the organizations meet the minimum requirements for nonprofit pre-bankruptcy budget and credit counseling;

B. The organizations may provide other credit counseling services that have not been reviewed by the United States Trustee or a bankruptcy administrator; and

C. The United States Trustee or the bankruptcy administrator does not endorse or recommend any particular organization.

3. *Automated response systems or devices.* At their option, card issuers may use toll-free telephone numbers that connect consumers to automated systems, such as an interactive voice response system, through which consumers may obtain the information required by § 226.7(b)(12)(iv) by inputting information using a touch-tone telephone or similar device.

4. *Toll-free telephone number.* A card issuer may provide a toll-free telephone number that is designed to handle customer service calls generally, so long as the option to receive the information required by § 226.7(b)(12)(iv) is prominently disclosed to the consumer. For automated systems, the option to receive the information required by § 226.7(b)(12)(iv) is prominently disclosed to the consumer if it is listed as one of the options in the first menu of options given to the consumer, such as “Press or say ‘3’ if you would like information about credit counseling services.” If the automated system permits callers to select the language in which the call is conducted and in which information is provided, the menu to select the language may precede the menu with the option to receive information about accessing credit counseling services.

5. *Third parties.* At their option, card issuers may use a third party to establish and maintain a toll-free telephone number for use by the issuer to provide the information required by § 226.7(b)(12)(iv).

6. *Web site address.* When making the repayment disclosures on the periodic statement pursuant to § 226.7(b)(12), a card issuer at its option may also include a reference to a Web site address (in addition to the toll-free telephone number) where its customers may obtain the information required by § 226.7(b)(12)(iv), so long as the information provided on the Web site complies with § 226.7(b)(12)(iv). The Web site address disclosed must take consumers directly to the Web page where information about accessing credit counseling may be obtained. In the alternative, the card issuer may disclose the Web site address for the Web page operated by the United States Trustee where consumers may obtain information about approved credit counseling organizations. Disclosing this Web site address does not by itself constitute

a statement that organizations have been approved by the United States Trustee for purposes of comment 7(b)(12)(iv)–2.iv.

7. *Advertising or marketing information.* If a consumer requests information about credit counseling services, the card issuer may not provide advertisements or marketing materials to the consumer (except for providing the name of the issuer) prior to providing the information required by § 226.7(b)(12)(iv). Educational materials that do not solicit business are not considered advertisements or marketing materials for this purpose. Examples:

i. *Toll-free telephone number.* As described in comment 7(b)(12)(iv)–4, an issuer may provide a toll-free telephone number that is designed to handle customer service calls generally, so long as the option to receive the information required by § 226.7(b)(12)(iv) through that toll-free telephone number is prominently disclosed to the consumer. Once the consumer selects the option to receive the information required by § 226.7(b)(12)(iv), the issuer may not provide advertisements or marketing materials to the consumer (except for providing the name of the issuer) prior to providing the required information.

ii. *Web page.* If the issuer discloses a link to a Web site address as part of the disclosures pursuant to comment 7(b)(12)(iv)–6, the issuer may not provide advertisements or marketing materials (except for providing the name of the issuer) on the Web page accessed by the address prior to providing the information required by § 226.7(b)(12)(iv).

7(b)(12)(v) Exemptions.

1. *Billing cycle where paying the minimum payment due for that billing cycle will pay the outstanding balance on the account for that billing cycle.* Under § 226.7(b)(12)(v)(C), a card issuer is exempt from the repayment disclosure requirements set forth in § 226.7(b)(12) for a particular billing cycle where paying the minimum payment due for that billing cycle will pay the outstanding balance on the account for that billing cycle. For example, if the entire outstanding balance on an account for a particular billing cycle is \$20 and the minimum payment is \$20, an issuer would not need to comply with the repayment disclosure requirements for that particular billing cycle. In addition, this exemption would apply to a charged-off account where payment of the entire account balance is due immediately.

7(b)(13) Format requirements.

1. *Combined deposit account and credit account statements.* Some financial institutions provide information about deposit account and open-end credit account activity on one periodic statement. For purposes of providing disclosures on the front of the first page of the periodic statement pursuant to § 226.7(b)(13), the first page of such a combined statement shall be the page on which credit transactions first appear.

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§ 226.9—Subsequent Disclosure Requirements

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9(b) Disclosures for supplemental credit access devices and additional features.

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9(b)(3) Checks that access a credit card account.

9(b)(3)(i) Disclosures.

1. *Front of the page containing the checks.* The following would comply with the requirement that the tabular disclosures provided pursuant to § 226.9(b)(3) appear on the front of the page containing the checks:

- Providing the tabular disclosure on the front of the first page on which checks appear, for an offer where checks are provided on multiple pages;
- Providing the tabular disclosure on the front of a mini-book or accordion booklet containing the checks; or
- Providing the tabular disclosure on the front of the solicitation letter, when the checks are printed on the front of the same page as the solicitation letter even if the checks can be separated by the consumer from the solicitation letter using perforations.

2. *Combined disclosures for checks and other transactions subject to the same terms.* A card issuer may include in the tabular disclosure provided pursuant to § 226.9(b)(3) disclosures regarding the terms offered on non-check transactions, provided that such transactions are subject to the same terms that are required to be disclosed pursuant to § 226.9(b)(3)(i) for the checks that access a credit card account. However, a card issuer may not include in the table information regarding additional terms that are not required disclosures for checks that access a credit card account pursuant to § 226.9(b)(3). Paragraph 9(b)(3)(i)(D).

1. *Grace period.* A creditor may not disclose under § 226.9(b)(3)(i)(D) the limitations on the imposition of finance charges as a result of a loss of a grace period in § 226.54, or the impact of payment allocation on whether interest is charged on transactions as a result of a loss of a grace period. Some creditors may offer a grace period on credit extended by the use of an access check under which interest will not be charged on the check transactions if the consumer pays the outstanding balance shown on a periodic statement in full by the due date shown on that statement for one or more billing cycles. In these circumstances, § 226.9(b)(3)(i)(D) requires that the creditor disclose the grace period using the following language, or substantially similar language, as applicable: “Your due date is [at least] \_\_\_ days after the close of each billing cycle. We will not charge you any interest on check transactions if you pay your entire balance by the due date each month.” However, other creditors may offer a grace period on check transactions under which interest may be charged on check transactions even if the consumer pays the outstanding balance shown on a periodic statement in full by the due date shown on that statement each billing cycle. In these circumstances, § 226.9(b)(3)(i)(D) requires the creditor to amend the above disclosure language to describe accurately the conditions on the applicability of the grace period. Creditors may use the following language to describe that no grace period on check transactions is offered, as applicable: “We will begin

charging interest on these checks on the transaction date.”

9(c) Change in terms.

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9(c)(2) Rules affecting open-end (not home-secured) plans.

1. *Changes initially disclosed.* Except as provided in § 226.9(g)(1), no notice of a change in terms need be given if the specific change is set forth initially consistent with any applicable requirements, such as rate or fee increases upon expiration of a specific period of time that were disclosed in accordance with § 226.9(c)(2)(v)(B) or rate increases under a properly disclosed variable-rate plan in accordance with § 226.9(c)(2)(v)(C). In contrast, notice must be given if the contract allows the creditor to increase a rate or fee at its discretion.

2. *State law issues.* Some issues are not addressed by § 226.9(c)(2) because they are controlled by state or other applicable laws. These issues include the types of changes a creditor may make, to the extent otherwise permitted by this regulation.

3. *Change in billing cycle.* Whenever the creditor changes the consumer's billing cycle, it must give a change-in-terms notice if the change affects any of the terms described in § 226.9(c)(2)(i), unless an exception under § 226.9(c)(2)(v) applies; for example, the creditor must give advance notice if the creditor initially disclosed a 28-day grace period on purchases and the consumer will have fewer days during the billing cycle change. See also § 226.7(b)(11)(i)(A) regarding the general requirement that the payment due date for a credit card account under an open-end (not home-secured) consumer credit plan must be the same day each month.

4. *Relationship to § 226.9(b).* If a creditor adds a feature to the account on the type of terms otherwise required to be disclosed under § 226.6, the creditor must satisfy: The requirement to provide the finance charge disclosures for the added feature under § 226.9(b); and any applicable requirement to provide a change-in-terms notice under § 226.9(c), including any advance notice that must be provided. For example, if a creditor adds a balance transfer feature to an account more than 30 days after account-opening disclosures are provided, it must give the finance charge disclosures for the balance transfer feature under § 226.9(b) as well as comply with the change-in-terms notice requirements under § 226.9(c), including providing notice of the change at least 45 days prior to the effective date of the change. Similarly, if a creditor makes a balance transfer offer on finance charge terms that are higher than those previously disclosed for balance transfers, it would also generally be required to provide a change-in-terms notice at least 45 days in advance of the effective date of the change. A creditor may provide a single notice under § 226.9(c) to satisfy the notice requirements of both paragraphs (b) and (c) of § 226.9. For checks that access a credit card account subject to the disclosure requirements in § 226.9(b)(3), a creditor is not subject to the notice requirements under § 226.9(c) even if the applicable rate or fee is higher than those previously disclosed for such checks. Thus, for example, the creditor

need not wait 45 days before applying the new rate or fee for transactions made using such checks, but the creditor must make the required disclosures on or with the checks in accordance with § 226.9(b)(3).

9(c)(2)(i) Changes where written advance notice is required.

1. *Affected consumers.* Change-in-terms notices need only go to those consumers who may be affected by the change. For example, a change in the periodic rate for check overdraft credit need not be disclosed to consumers who do not have that feature on their accounts. If a single credit account involves multiple consumers that may be affected by the change, the creditor should refer to § 226.5(d) to determine the number of notices that must be given.

2. *Timing—effective date of change.* The rule that the notice of the change in terms be provided at least 45 days before the change takes effect permits mid-cycle changes when there is clearly no retroactive effect, such as the imposition of a transaction fee. Any change in the balance computation method, in contrast, would need to be disclosed at least 45 days prior to the billing cycle in which the change is to be implemented.

3. *Changes agreed to by the consumer.* See also comment 5(b)(1)(i)–6.

4. *Form of change-in-terms notice.* Except if § 226.9(c)(2)(iv) applies, a complete new set of the initial disclosures containing the changed term complies with § 226.9(c)(2)(i) if the change is highlighted on the disclosure statement, or if the disclosure statement is accompanied by a letter or some other insert that indicates or draws attention to the term being changed.

5. *Security interest change—form of notice.* A creditor must provide a description of any security interest it is acquiring under § 226.9(c)(2)(iv). A copy of the security agreement that describes the collateral securing the consumer's account may also be used as the notice, when the term change is the addition of a security interest or the addition or substitution of collateral.

6. *Examples.* See comment 55(a)–1 and 55(b)–3 for examples of how a card issuer that is subject to § 226.55 may comply with the timing requirements for notices required by § 226.9(c)(2)(i).

9(c)(2)(iii) Charges not covered by § 226.6(b)(1) and (b)(2).

1. *Applicability.* Generally, if a creditor increases any component of a charge, or introduces a new charge, that is imposed as part of the plan under § 226.6(b)(3) but is not required to be disclosed as part of the account-opening summary table under § 226.6(b)(1) and (b)(2), the creditor must either, at its option (i) provide at least 45 days' written advance notice before the change becomes effective to comply with the requirements of § 226.9(c)(2)(i), or (ii) provide notice orally or in writing, or electronically if the consumer requests the service electronically, of the amount of the charge to an affected consumer before the consumer agrees to or becomes obligated to pay the charge, at a time and in a manner that a consumer would be likely to notice the disclosure. (See the commentary under § 226.5(a)(1)(iii) regarding disclosure of such changes in electronic form.) For example, a

fee for expedited delivery of a credit card is a charge imposed as part of the plan under § 226.6(b)(3) but is not required to be disclosed in the account-opening summary table under § 226.6(b)(1) and (b)(2). If a creditor changes the amount of that expedited delivery fee, the creditor may provide written advance notice of the change to affected consumers at least 45 days before the change becomes effective. Alternatively, the creditor may provide oral or written notice, or electronic notice if the consumer requests the service electronically, of the amount of the charge to an affected consumer before the consumer agrees to or becomes obligated to pay the charge, at a time and in a manner that the consumer would be likely to notice the disclosure. (See comment 5(b)(1)(ii)–1 for examples of disclosures given at a time and in a manner that the consumer would be likely to notice them.)

9(c)(2)(iv) Disclosure requirements.

1. *Changing margin for calculating a variable rate.* If a creditor is changing a margin used to calculate a variable rate, the creditor must disclose the amount of the new rate (as calculated using the new margin) in the table described in § 226.9(c)(2)(iv), and include a reminder that the rate is a variable rate. For example, if a creditor is changing the margin for a variable rate that uses the prime rate as an index, the creditor must disclose in the table the new rate (as calculated using the new margin) and indicate that the rate varies with the market based on the prime rate.

2. *Changing index for calculating a variable rate.* If a creditor is changing the index used to calculate a variable rate, the creditor must disclose the amount of the new rate (as calculated using the new index) and indicate that the rate varies and how the rate is determined, as explained in § 226.6(b)(2)(i)(A). For example, if a creditor is changing from using a prime rate to using the LIBOR in calculating a variable rate, the creditor would disclose in the table the new rate (using the new index) and indicate that the rate varies with the market based on the LIBOR.

3. *Changing from a variable rate to a non-variable rate.* If a creditor is changing a rate applicable to a consumer's account from a variable rate to a non-variable rate, the creditor generally must provide a notice as otherwise required under § 226.9(c) even if the variable rate at the time of the change is higher than the non-variable rate. However, a creditor is not required to provide a notice under § 226.9(c) if the creditor provides the disclosures required by § 226.9(c)(2)(v)(B) or (c)(2)(v)(D) in connection with changing a variable rate to a lower non-variable rate. Similarly, a creditor is not required to provide a notice under § 226.9(c) when changing a variable rate to a lower non-variable rate in order to comply with 50 U.S.C. app. 527 or a similar Federal or State statute or regulation. Finally, a creditor is not required to provide a notice under § 226.9(c) when changing a variable rate to a lower non-variable rate in order to comply with § 226.55(b)(4).

4. *Changing from a non-variable rate to a variable rate.* If a creditor is changing a rate applicable to a consumer's account from a

non-variable rate to a variable rate, the creditor generally must provide a notice as otherwise required under § 226.9(c) even if the non-variable rate is higher than the variable rate at the time of the change. However, a creditor is not required to provide a notice under § 226.9(c) if the creditor provides the disclosures required by § 226.9(c)(2)(v)(B) or (c)(2)(v)(D) in connection with changing a non-variable rate to a lower variable rate. Similarly, a creditor is not required to provide a notice under § 226.9(c) when changing a non-variable rate to a lower variable rate in order to comply with 50 U.S.C. app. 527 or a similar Federal or State statute or regulation. Finally, a creditor is not required to provide a notice under § 226.9(c) when changing a non-variable rate to a lower variable rate in order to comply with § 226.55(b)(4). See comment 55(b)(2)–4 regarding the limitations in § 226.55(b)(2) on changing the rate that applies to a protected balance from a non-variable rate to a variable rate.

5. *Changes in the penalty rate, the triggers for the penalty rate, or how long the penalty rate applies.* If a creditor is changing the amount of the penalty rate, the creditor must also redisclose the triggers for the penalty rate and the information about how long the penalty rate applies even if those terms are not changing. Likewise, if a creditor is changing the triggers for the penalty rate, the creditor must redisclose the amount of the penalty rate and information about how long the penalty rate applies. If a creditor is changing how long the penalty rate applies, the creditor must redisclose the amount of the penalty rate and the triggers for the penalty rate, even if they are not changing.

6. *Changes in fees.* If a creditor is changing part of how a fee that is disclosed in a tabular format under § 226.6(b)(1) and (b)(2) is determined, the creditor must redisclose all relevant information related to that fee regardless of whether this other information is changing. For example, if a creditor currently charges a cash advance fee of “Either \$5 or 3% of the transaction amount, whichever is greater. (Max: \$100),” and the creditor is only changing the minimum dollar amount from \$5 to \$10, the issuer must redisclose the other information related to how the fee is determined. For example, the creditor in this example would disclose the following: “Either \$10 or 3% of the transaction amount, whichever is greater. (Max: \$100).”

7. *Combining a notice described in § 226.9(c)(2)(iv) with a notice described in § 226.9(g)(3).* If a creditor is required to provide a notice described in § 226.9(c)(2)(iv) and a notice described in § 226.9(g)(3) to a consumer, the creditor may combine the two notices. This would occur if penalty pricing has been triggered, and other terms are changing on the consumer’s account at the same time.

8. *Content.* Sample G–20 contains an example of how to comply with the requirements in § 226.9(c)(2)(iv) when a variable rate is being changed to a non-variable rate on a credit card account. The sample explains when the new rate will apply to new transactions and to which balances the current rate will continue to

apply. Sample G–21 contains an example of how to comply with the requirements in § 226.9(c)(2)(iv) when the late payment fee on a credit card account is being increased, and the returned payment fee is also being increased. The sample discloses the consumer’s right to reject the changes in accordance with § 226.9(h).

9. *Clear and conspicuous standard.* See comment 5(a)(1)–1 for the clear and conspicuous standard applicable to disclosures required under § 226.9(c)(2)(iv)(A)(1).

10. *Terminology.* See § 226.5(a)(2) for terminology requirements applicable to disclosures required under § 226.9(c)(2)(iv)(A)(1).

11. *Reasons for increase.* i. *In general.* Section 226.9(c)(2)(iv)(A)(8) requires card issuers to disclose the principal reason(s) for increasing an annual percentage rate applicable to a credit card account under an open-end (not home-secured) consumer credit plan. The regulation does not mandate a minimum number of reasons that must be disclosed. However, the specific reasons disclosed under § 226.9(c)(2)(iv)(A)(8) are required to relate to and accurately describe the principal factors actually considered by the card issuer in increasing the rate. A card issuer may describe the reasons for the increase in general terms. For example, the notice of a rate increase triggered by a decrease of 100 points in a consumer’s credit score may state that the increase is due to “a decline in your creditworthiness” or “a decline in your credit score.” Similarly, a notice of a rate increase triggered by a 10% increase in the card issuer’s cost of funds may be disclosed as “a change in market conditions.” In some circumstances, it may be appropriate for a card issuer to combine the disclosure of several reasons in one statement. However, § 226.9(c)(2)(iv)(A)(8) requires that the notice specifically disclose any violation of the terms of the account on which the rate is being increased, such as a late payment or a returned payment, if such violation of the account terms is one of the four principal reasons for the rate increase.

ii. *Example.* Assume that a consumer made a late payment on the credit card account on which the rate increase is being imposed, made a late payment on a credit card account with another card issuer, and the consumer’s credit score decreased, in part due to such late payments. The card issuer may disclose the reasons for the rate increase as a decline in the consumer’s credit score and the consumer’s late payment on the account subject to the increase. Because the late payment on the credit card account with the other issuer also likely contributed to the decline in the consumer’s credit score, it is not required to be separately disclosed. However, the late payment on the credit card account on which the rate increase is being imposed must be specifically disclosed even if that late payment also contributed to the decline in the consumer’s credit score.

9(c)(2)(v) Notice not required.

1. *Changes not requiring notice.* The following are examples of changes that do not require a change-in-terms notice:

i. A change in the consumer’s credit limit except as otherwise required by § 226.9(c)(2)(vi).

ii. A change in the name of the credit card or credit card plan.

iii. The substitution of one insurer for another.

iv. A termination or suspension of credit privileges.

v. Changes arising merely by operation of law; for example, if the creditor’s security interest in a consumer’s car automatically extends to the proceeds when the consumer sells the car.

2. *Skip features.* i. *Skipped or reduced payments.* If a credit program allows consumers to skip or reduce one or more payments during the year, no notice of the change in terms is required either prior to the reduction in payments or upon resumption of the higher payments if these features are explained on the account-opening disclosure statement (including an explanation of the terms upon resumption). For example, a merchant may allow consumers to skip the December payment to encourage holiday shopping, or a teacher’s credit union may not require payments during summer vacation. Otherwise, the creditor must give notice prior to resuming the original payment schedule, even though no notice is required prior to the reduction. The change-in-terms notice may be combined with the notice offering the reduction. For example, the periodic statement reflecting the skip feature may also be used to notify the consumer of the resumption of the original payment schedule, either by stating explicitly when the higher resumes or by indicating the duration of the skip option. Language such as “You may skip your October payment” may serve as the change-in-terms notice.

ii. *Temporary reductions in interest rates or fees.* If a credit program involves temporary reductions in an interest rate or fee, no notice of the change in terms is required either prior to the reduction or upon resumption of the original rate or fee if these features are disclosed in advance in accordance with the requirements of § 226.9(c)(2)(v)(B). Otherwise, the creditor must give notice prior to resuming the original rate or fee, even though no notice is required prior to the reduction. The notice provided prior to resuming the original rate or fee must comply with the timing requirements of § 226.9(c)(2)(i) and the content and format requirements of § 226.9(c)(2)(iv)(A), (B) (if applicable), (C) (if applicable), and (D). See comment 55(b)–3 for guidance regarding the application of § 226.55 in these circumstances.

3. *Changing from a variable rate to a non-variable rate.* See comment 9(c)(2)(iv)–3.

4. *Changing from a non-variable rate to a variable rate.* See comment 9(c)(2)(iv)–4.

5. *Temporary rate or fee reductions offered by telephone.* The timing requirements of § 226.9(c)(2)(v)(B) are deemed to have been met, and written disclosures required by § 226.9(c)(2)(v)(B) may be provided as soon as reasonably practicable after the first transaction subject to a rate that will be in effect for a specified period of time (a temporary rate) or the imposition of a fee that will be in effect for a specified period of time (a temporary fee) if:

i. The consumer accepts the offer of the temporary rate or temporary fee by telephone;

ii. The creditor permits the consumer to reject the temporary rate or temporary fee offer and have the rate or rates or fee that previously applied to the consumer's balances reinstated for 45 days after the creditor mails or delivers the written disclosures required by § 226.9(c)(2)(v)(B), except that the creditor need not permit the consumer to reject a temporary rate or temporary fee offer if the rate or rates or fee that will apply following expiration of the temporary rate do not exceed the rate or rates or fee that applied immediately prior to commencement of the temporary rate or temporary fee; and

iii. The disclosures required by § 226.9(c)(2)(v)(B) and the consumer's right to reject the temporary rate or temporary fee offer and have the rate or rates or fee that previously applied to the consumer's account reinstated, if applicable, are disclosed to the consumer as part of the temporary rate or temporary fee offer.

6. *First listing.* The disclosures required by § 226.9(c)(2)(v)(B)(1) are only required to be provided in close proximity and in equal prominence to the first listing of the temporary rate or fee in the disclosure provided to the consumer. For purposes of § 226.9(c)(2)(v)(B), the first statement of the temporary rate or fee is the most prominent listing on the front side of the first page of the disclosure. If the temporary rate or fee does not appear on the front side of the first page of the disclosure, then the first listing of the temporary rate or fee is the most prominent listing of the temporary rate on the subsequent pages of the disclosure. For advertising requirements for promotional rates, see § 226.16(g).

7. *Close proximity—point of sale.* Creditors providing the disclosures required by § 226.9(c)(2)(v)(B) of this section in person in connection with financing the purchase of goods or services may, at the creditor's option, disclose the annual percentage rate or fee that would apply after expiration of the period on a separate page or document from the temporary rate or fee and the length of the period, provided that the disclosure of the annual percentage rate or fee that would apply after the expiration of the period is equally prominent to, and is provided at the same time as, the disclosure of the temporary rate or fee and length of the period.

8. *Disclosure of annual percentage rates.* If a rate disclosed pursuant to § 226.9(c)(2)(v)(B) or (c)(2)(v)(D) is a variable rate, the creditor must disclose the fact that the rate may vary and how the rate is determined. For example, a creditor could state "After October 1, 2009, your APR will be 14.99%. This APR will vary with the market based on the Prime Rate."

9. *Deferred interest or similar programs.* If the applicable conditions are met, the exception in § 226.9(c)(2)(v)(B) applies to deferred interest or similar promotional programs under which the consumer is not obligated to pay interest that accrues on a balance if that balance is paid in full prior to the expiration of a specified period of time. For purposes of this comment and § 226.9(c)(2)(v)(B), "deferred interest" has the same meaning as in § 226.16(h)(2) and associated commentary. For such programs, a

creditor must disclose pursuant to § 226.9(c)(2)(v)(B)(1) the length of the deferred interest period and the rate that will apply to the balance subject to the deferred interest program if that balance is not paid in full prior to expiration of the deferred interest period. Examples of language that a creditor may use to make the required disclosures under § 226.9(c)(2)(v)(B)(1) include:

i. "No interest if paid in full in 6 months. If the balance is not paid in full in 6 months, interest will be imposed from the date of purchase at a rate of 15.99%."

ii. "No interest if paid in full by December 31, 2010. If the balance is not paid in full by that date, interest will be imposed from the transaction date at a rate of 15%."

10. *Relationship between § 226.9(c)(2)(v)(B) and 226.6(b).* A disclosure of the information described in § 226.9(c)(2)(v)(B)(1) provided in the account-opening table in accordance with § 226.6(b) complies with the requirements of § 226.9(c)(2)(v)(B)(2), if the listing of the introductory rate in such tabular disclosure also is the first listing as described in comment 9(c)(2)(v)–6.

11. *Disclosure of the terms of a workout or temporary hardship arrangement.* In order for the exception in § 226.9(c)(2)(v)(D) to apply, the disclosure provided to the consumer pursuant to § 226.9(c)(2)(v)(D)(2) must set forth:

i. The annual percentage rate that will apply to balances subject to the workout or temporary hardship arrangement;

ii. The annual percentage rate that will apply to such balances if the consumer completes or fails to comply with the terms of, the workout or temporary hardship arrangement;

iii. Any reduced fee or charge of a type required to be disclosed under § 226.6(b)(2)(ii), (b)(2)(iii), (b)(2)(viii), (b)(2)(ix), (b)(2)(xi), or (b)(2)(xii) that will apply to balances subject to the workout or temporary hardship arrangement, as well as the fee or charge that will apply if the consumer completes or fails to comply with the terms of the workout or temporary hardship arrangement;

iv. Any reduced minimum periodic payment that will apply to balances subject to the workout or temporary hardship arrangement, as well as the minimum periodic payment that will apply if the consumer completes or fails to comply with the terms of the workout or temporary hardship arrangement; and

v. If applicable, that the consumer must make timely minimum payments in order to remain eligible for the workout or temporary hardship arrangement.

12. *Index not under creditor's control.* See comment 55(b)(2)–2 for guidance on when an index is deemed to be under a creditor's control.

13. *Temporary rates—relationship to § 226.59.* i. *General.* Section 226.59 requires a card issuer to review rate increases imposed due to the revocation of a temporary rate. In some circumstances, § 226.59 may require an issuer to reinstate a reduced temporary rate based on that review. If, based on a review required by § 226.59, a creditor

reinstates a temporary rate that had been revoked, the card issuer is not required to provide an additional notice to the consumer when the reinstated temporary rate expires, if the card issuer provided the disclosures required by § 226.9(c)(2)(v)(B) prior to the original commencement of the temporary rate. See § 226.55 and the associated commentary for guidance on the permissibility and applicability of rate increases.

ii. *Example.* A consumer opens a new credit card account under an open-end (not home-secured) consumer credit plan on January 1, 2011. The annual percentage rate applicable to purchases is 18%. The card issuer offers the consumer a 15% rate on purchases made between January 1, 2012 and January 1, 2014. Prior to January 1, 2012, the card issuer discloses, in accordance with § 226.9(c)(2)(v)(B), that the rate on purchases made during that period will increase to the standard 18% rate on January 1, 2014. In March 2012, the consumer makes a payment that is ten days late. The card issuer, upon providing 45 days' advance notice of the change under § 226.9(g), increases the rate on new purchases to 18% effective as of June 1, 2012. On December 1, 2012, the issuer performs a review of the consumer's account in accordance with § 226.59. Based on that review, the card issuer is required to reduce the rate to the original 15% temporary rate as of January 15, 2013. On January 1, 2014, the card issuer may increase the rate on purchases to 18%, as previously disclosed prior to January 1, 2012, without providing an additional notice to the consumer.

\* \* \* \* \*  
9(e) Disclosures upon renewal of credit or charge card.  
\* \* \* \* \*

10. *Disclosure of changes in terms required to be disclosed pursuant to § 226.6(b)(1) and (b)(2).* Clear and conspicuous disclosure of a changed term on a periodic statement provided to a consumer prior to renewal of the consumer's account constitutes prior disclosure of that term for purposes of § 226.9(e)(1). Card issuers should refer to § 226.9(c)(2) for additional timing, content, and formatting requirements that apply to certain changes in terms under that paragraph.  
\* \* \* \* \*

§ 226.10—Payments  
\* \* \* \* \*

10(b) Specific requirements for payments.  
\* \* \* \* \*

2. *Payment methods promoted by creditor.* If a creditor promotes a specific payment method, any payments made via that method (prior to any cut-off time specified by the creditor, to the extent permitted by § 226.10(b)(2)) are generally conforming payments for purposes of § 226.10(b). For example:

i. If a creditor promotes electronic payment via its Web site (such as by disclosing on the Web site itself that payments may be made via the Web site), any payments made via the creditor's Web site prior to the creditor's specified cut-off time, if any, would generally be conforming payments for purposes of § 226.10(b).



ii. If a creditor promotes payment by telephone (for example, by including the option to pay by telephone in a menu of options provided to consumers at a toll-free number disclosed on its periodic statement), payments made by telephone would generally be conforming payments for purposes of § 226.10(b).

iii. If a creditor promotes in-person payments, for example by stating in an advertisement that payments may be made in person at its branch locations, such in-person payments made at a branch or office of the creditor generally would be conforming payments for purposes of § 226.10(b).

iv. If a creditor promotes that payments may be made through an unaffiliated third party, such as by disclosing the Web site address of that third party on the periodic statement, payments made via that third party's Web site generally would be conforming payments for purposes of § 226.10(b). In contrast, if a customer service representative of the creditor confirms to a consumer that payments may be made via an unaffiliated third party, but the creditor does not otherwise promote that method of payment, § 226.10(b) permits the creditor to treat payments made via such third party as nonconforming payments in accordance with § 226.10(b)(4).

\* \* \* \* \*

10(e) Limitations on fees related to method of payment.

\* \* \* \* \*

4. *Creditor.* For purposes of § 226.10(e), the term "creditor" includes a third party that collects, receives, or processes payments on behalf of a creditor. For example:

i. Assume that a creditor uses a service provider to receive, collect, or process on the creditor's behalf payments made through the creditor's Web site or made through an automated telephone payment service. In these circumstances, the service provider would be considered a creditor for purposes of paragraph (e).

ii. Assume that a consumer pays a fee to a money transfer or payment service in order to transmit a payment to the creditor on the consumer's behalf. In these circumstances, the money transfer or payment service would not be considered a creditor for purposes of paragraph (e).

iii. Assume that a consumer has a checking account at a depository institution. The consumer makes a payment to the creditor from the checking account using a bill payment service provided by the depository institution. In these circumstances, the depository institution would not be considered a creditor for purposes of paragraph (e).

\* \* \* \* \*

10(f) Changes by card issuer.

\* \* \* \* \*

3. *Safe harbor.* i. *General.* A card issuer may elect not to impose a late fee or finance charge on a consumer's account for the 60-day period following a change in address for receiving payment or procedures for handling cardholder payments which could reasonably be expected to cause a material delay in crediting of a payment to the consumer's account. For purposes of

§ 226.10(f), a late fee or finance charge is not imposed if the fee or charge is waived or removed, or an amount equal to the fee or charge is credited to the account.

ii. *Retail location.* For a material change in the address of a retail location or procedures for handling cardholder payments at a retail location, a card issuer may impose a late fee or finance charge on a consumer's account for a late payment during the 60-day period following the date on which the change took effect. However, if a card issuer is notified by a consumer no later than 60 days after the card issuer transmitted the first periodic statement that reflects the late fee or finance charge for a late payment that the late payment was caused by such change, the card issuer must waive or remove any late fee or finance charge, or credit an amount equal to any late fee or finance charge, imposed on the account during the 60-day period following the date on which the change took effect.

\* \* \* \* \*

§ 226.12—Special Credit Card Provisions

\* \* \* \* \*

12(c) Right of cardholder to assert claims or defenses against card issuer.

\* \* \* \* \*

4. *Method of calculating the amount of credit outstanding.* The amount of the claim or defense that the cardholder may assert shall not exceed the amount of credit outstanding for the disputed transaction at the time the cardholder first notifies the card issuer or the person honoring the credit card of the existence of the claim or defense. However, when a consumer has asserted a claim or defense against a creditor pursuant to § 226.12(c), the creditor must apply any payment or other credit in a manner that avoids or minimizes any reduction in the amount subject to that claim or defense. Accordingly, to determine the amount of credit outstanding for purposes of this section, payments and other credits must be applied first to amounts other than the disputed transaction.

i. For examples of how to comply with §§ 226.12 and 226.53 for credit card accounts under an open-end (not home-secured) consumer credit plan, see comment 53–3.

ii. For other types of credit card accounts, creditors may, at their option, apply payments consistent with § 226.53 and comment 53–3. In the alternative, payments and other credits may be applied to: Late charges in the order of entry to the account; then to finance charges in the order of entry to the account; and then to any debits other than the transaction subject to the claim or defense in the order of entry to the account. In these circumstances, if more than one item is included in a single extension of credit, credits are to be distributed pro rata according to prices and applicable taxes.

\* \* \* \* \*

§ 226.13—Billing Error Resolution

\* \* \* \* \*

13(c) Time for resolution; general procedures.

\* \* \* \* \*

Paragraph 13(c)(2).

\* \* \* \* \*

2. *Finality of error resolution procedure.* A creditor must comply with the error resolution procedures and complete its investigation to determine whether an error occurred within two complete billing cycles as set forth in § 226.13(c)(2). Thus, for example, § 226.13(c)(2) prohibits a creditor from reversing amounts previously credited for an alleged billing error even if the creditor obtains evidence after the error resolution time period has passed indicating that the billing error did not occur as asserted by the consumer. Similarly, if a creditor fails to mail or deliver a written explanation setting forth the reason why the billing error did not occur as asserted, or otherwise fails to comply with the error resolution procedures set forth in § 226.13(f), the creditor generally must credit the disputed amount and related finance or other charges, as applicable, to the consumer's account. However, if a consumer receives more than one credit to correct the same billing error, § 226.13 does not prevent a creditor from reversing amounts it has previously credited to correct that error, provided that the total amount of the remaining credits is equal to or more than the amount of the error and that the consumer does not incur any fees or other charges as a result of the timing of the creditor's reversal. For example, assume that a consumer asserts a billing error with respect to a \$100 transaction and that the creditor posts a \$100 credit to the consumer's account to correct that error during the time period set forth in § 226.13(c)(2). However, following that time period, a merchant or other person honoring the credit card issues a \$100 credit to the consumer to correct the same error. In these circumstances, § 226.13(c)(2) does not prohibit the creditor from reversing its \$100 credit once the \$100 credit from the merchant or other person has posted to the consumer's account.

\* \* \* \* \*

§ 226.14—Determination of Annual Percentage Rate

14(a) General rule.

\* \* \* \* \*

6. *Effect of leap year.* Any variance in the annual percentage rate that occurs solely by reason of the addition of February 29 in a leap year, may be disregarded, and such a rate may be disclosed without regard to such variance.

\* \* \* \* \*

§ 226.16—Advertising

1. *Clear and conspicuous standard—general.* Section 226.16 is subject to the general "clear and conspicuous" standard for subpart B (see § 226.5(a)(1)) but prescribes no specific rules for the format of the necessary disclosures, other than the format requirements related to the disclosure of a promotional rate or payment under § 226.16(d)(6), a promotional rate or promotional fee under § 226.16(g), or a deferred interest or similar offer under § 226.16(h). Other than the disclosure of certain terms described in §§ 226.16(d)(6), (g), or (h), the credit terms need not be

printed in a certain type size nor need they appear in any particular place in the advertisement.

2. *Clear and conspicuous standard—promotional rates or payments; deferred interest or similar offers.* i. For purposes of § 226.16(d)(6), a clear and conspicuous disclosure means that the required information in § 226.16(d)(6)(i)(A)–(C) is disclosed with equal prominence and in close proximity to the promotional rate or payment to which it applies. If the information in § 226.16(d)(6)(ii)(A)–(C) is the same type size and is located immediately next to or directly above or below the promotional rate or payment to which it applies, without any intervening text or graphical displays, the disclosures would be deemed to be equally prominent and in close proximity. Notwithstanding the above, for electronic advertisements that disclose promotional rates or payments, compliance with the requirements of § 226.16(c) is deemed to satisfy the clear and conspicuous standard.

ii. For purposes of § 226.16(g)(4) as it applies to written or electronic advertisements only, a clear and conspicuous disclosure means the required information in § 226.16(g)(4)(i) and, as applicable, (g)(4)(ii) and (g)(4)(iii) must be equally prominent to the promotional rate or promotional fee to which it applies. If the information in § 226.16(g)(4)(i) and, as applicable, (g)(4)(ii) and (g)(4)(iii) is the same type size as the promotional rate or promotional fee to which it applies, the disclosures would be deemed to be equally prominent. For purposes of § 226.16(h)(3) as it applies to written or electronic advertisements only, a clear and conspicuous disclosure means the required information in § 226.16(h)(3) must be equally prominent to each statement of “no interest,” “no payments,” “deferred interest,” “same as cash,” or similar term regarding interest or payments during the deferred interest period. If the information required to be disclosed under § 226.16(h)(3) is the same type size as the statement of “no interest,” “no payments,” “deferred interest,” “same as cash,” or similar term regarding interest or payments during the deferred interest period, the disclosure would be deemed to be equally prominent.

\* \* \* \* \*

16(g) Promotional rates.

1. *Rate in effect at the end of the promotional period.* If the annual percentage rate that will be in effect at the end of the promotional period (i.e., the post-promotional rate) is a variable rate, the post-promotional rate for purposes of § 226.16(g)(2)(i) is the rate that would have applied at the time the promotional rate was advertised if the promotional rate was not offered, consistent with the accuracy requirements in § 226.5a(c)(2) and (e)(4), as applicable.

2. *Immediate proximity.* For written or electronic advertisements, including the term “introductory” or “intro” in the same phrase as the listing of the introductory rate or introductory fee is deemed to be in immediate proximity of the listing.

3. *Prominent location closely proximate.* For written or electronic advertisements, information required to be disclosed in

§ 226.16(g)(4)(i) and, as applicable, (g)(4)(ii) and (g)(4)(iii) that is in the same paragraph as the first listing of the promotional rate or promotional fee is deemed to be in a prominent location closely proximate to the listing. Information disclosed in a footnote will not be considered in a prominent location closely proximate to the listing.

4. *First listing.* For purposes of § 226.16(g)(4) as it applies to written or electronic advertisements, the first listing of the promotional rate or promotional fee is the most prominent listing of the rate or fee on the front side of the first page of the principal promotional document. The principal promotional document is the document designed to be seen first by the consumer in a mailing, such as a cover letter or solicitation letter. If the promotional rate or promotional fee does not appear on the front side of the first page of the principal promotional document, then the first listing of the promotional rate or promotional fee is the most prominent listing of the rate or fee on the subsequent pages of the principal promotional document. If the promotional rate or promotional fee is not listed on the principal promotional document or there is no principal promotional document, the first listing is the most prominent listing of the rate or fee on the front side of the first page of each document listing the promotional rate or promotional fee. If the promotional rate or promotional fee does not appear on the front side of the first page of a document, then the first listing of the promotional rate or promotional fee is the most prominent listing of the rate or fee on the subsequent pages of the document. If the listing of the promotional rate or promotional fee with the largest type size on the front side of the first page (or subsequent pages if the promotional rate or promotional fee is not listed on the front side of the first page) of the principal promotional document (or each document listing the promotional rate or promotional fee if the promotional rate or promotional fee is not listed on the principal promotional document or there is no principal promotional document) is used as the most prominent listing, it will be deemed to be the first listing. Consistent with comment 16(c)–1, a catalog or multiple-page advertisement is considered one document for purposes of § 226.16(g)(4).

5. *Post-promotional rate depends on consumer’s creditworthiness.* For purposes of disclosing the rate that may apply after the end of the promotional rate period, at the advertiser’s option, the advertisement may disclose the rates that may apply as either specific rates, or a range of rates. For example, if there are three rates that may apply (9.99%, 12.99% or 17.99%), an issuer may disclose these three rates as specific rates (9.99%, 12.99% or 17.99%) or as a range of rates (9.99%–17.99%).

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§ 226.30—Limitation on Rates

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8. *Manner of stating the maximum interest rate.* The maximum interest rate must be stated in the credit contract either as a specific amount or in any other manner that would allow the consumer to easily

ascertain, at the time of entering into the obligation, what the rate ceiling will be over the term of the obligation.

i. For example, the following statements would be sufficiently specific:

A. The maximum interest rate will not exceed X%.

B. The interest rate will never be higher than X percentage points above the initial rate of Y%.

C. The interest rate will not exceed X%, or X percentage points above [a rate to be determined at some future point in time], whichever is less.

D. The maximum interest rate will not exceed X%, or the state usury ceiling, whichever is less.

ii. The following statements would not comply with this section:

A. The interest rate will never be higher than X percentage points over the prevailing market rate.

B. The interest rate will never be higher than X percentage points above [a rate to be determined at some future point in time].

C. The interest rate will not exceed the state usury ceiling which is currently X%.

iii. A creditor may state the maximum rate in terms of a maximum annual percentage rate that may be imposed. Under an open-end credit plan, this normally would be the corresponding annual percentage rate. (See generally § 226.6(a)(1)(ii) and (b)(4)(i)(A).)

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§ 226.51—Ability To Pay

51(a) General rule.

51(a)(1) Consideration of ability to pay.

1. Consideration of additional factors.

Section 226.51(a) requires a card issuer to consider a consumer’s independent ability to make the required minimum periodic payments under the terms of an account based on the consumer’s independent income or assets and current obligations. The card issuer may also consider consumer reports, credit scores, and other factors, consistent with Regulation B (12 CFR part 202).

2. *Ability to pay as of application or consideration of increase.* A card issuer complies with § 226.51(a) if it bases its determination regarding a consumer’s independent ability to make the required minimum periodic payments on the facts and circumstances known to the card issuer at the time the consumer applies to open the credit card account or when the card issuer considers increasing the credit line on an existing account.

3. *Credit line increase.* When a card issuer considers increasing the credit line on an existing account, § 226.51(a) applies whether the consideration is based upon a request of the consumer or is initiated by the card issuer.

4. *Income and assets.* i. *Sources of information.* For purposes of § 226.51(a), a card issuer may consider the consumer’s income and assets based on:

A. Information provided by the consumer in connection with the credit card account under an open-end (not home-secured) consumer credit plan;

B. Information provided by the consumer in connection with any other financial

relationship the card issuer or its affiliates have with the consumer (subject to any applicable information-sharing rules);

C. Information obtained through third parties (subject to any applicable information-sharing rules); and

D. Information obtained through any empirically derived, demonstrably and statistically sound model that reasonably estimates a consumer's income and assets.

ii. *Income and assets of persons liable for debts incurred on account.* For purposes of § 226.51(a), a card issuer may consider any current or reasonably expected income and assets of the consumer or consumers who are applying for a new account and will be liable for debts incurred on that account. Similarly, when a card issuer is considering whether to increase the credit limit on an existing account, the card issuer may consider any current or reasonably expected income and assets of the consumer or consumers who are accountholders and are liable for debts incurred on that account. A card issuer may also consider any current or reasonably expected income and assets of a cosigner or guarantor who is or will be liable for debts incurred on the account. However, a card issuer may not use the income and assets of an authorized user or other person who is not liable for debts incurred on the account to satisfy the requirements of § 226.51, unless a Federal or State statute or regulation grants a consumer who is liable for debts incurred on the account an ownership interest in such income and assets. Information about current or reasonably expected income and assets includes, for example, information about current or expected salary, wages, bonus pay, tips, and commissions. Employment may be full-time, part-time, seasonal, irregular, military, or self-employment. Other sources of income could include interest or dividends, retirement benefits, public assistance, alimony, child support, or separate maintenance payments. A card issuer may also take into account assets such as savings accounts or investments.

iii. *Household income and assets.* Consideration of information regarding a consumer's household income does not by itself satisfy the requirement in § 226.51(a) to consider the consumer's independent ability to pay. For example, if a card issuer requests on its application forms that applicants provide their "household income," the card issuer may not rely solely on the information provided by applicants to satisfy the requirements of § 226.51(a). Instead, the card issuer would need to obtain additional information about an applicant's independent income (such as by contacting the applicant). However, if a card issuer requests on its application forms that applicants provide their income without reference to household income (such as by requesting "income" or "salary"), the card issuer may rely on the information provided by applicants to satisfy the requirements of § 226.51(a).

5. *Current obligations.* A card issuer may consider the consumer's current obligations based on information provided by the consumer or in a consumer report. In evaluating a consumer's current obligations, a card issuer need not assume that credit lines for other obligations are fully utilized.

6. *Joint applicants and joint accountholders.* With respect to the opening of a joint account for two or more consumers or a credit line increase on such an account, the card issuer may consider the collective ability of all persons who are or will be liable for debts incurred on the account to make the required payments.

51(a)(2) *Minimum periodic payments.*

1. *Applicable minimum payment formula.* For purposes of estimating required minimum periodic payments under the safe harbor set forth in § 226.51(a)(2)(ii), if the account has or may have a promotional program, such as a deferred payment or similar program, where there is no applicable minimum payment formula during the promotional period, the issuer must estimate the required minimum periodic payment based on the minimum payment formula that will apply when the promotion ends.

2. *Interest rate for purchases.* For purposes of estimating required minimum periodic payments under the safe harbor set forth in § 226.51(a)(2)(ii), if the interest rate for purchases is or may be a promotional rate, the issuer must use the post-promotional rate to estimate interest charges.

3. *Mandatory fees.* For purposes of estimating required minimum periodic payments under the safe harbor set forth in § 226.51(a)(2)(ii), mandatory fees that must be assumed to be charged include those fees the card issuer knows the consumer will be required to pay under the terms of the account if the account is opened, such as an annual fee. If a mandatory fee is a promotional fee (as defined in § 226.16(g)), the issuer must use the post-promotional fee amount for purposes of § 226.51(a)(2)(ii).

51(b) *Rules affecting young consumers.*

1. *Age as of date of application or consideration of credit line increase.* Sections 226.51(b)(1) and (b)(2) apply only to a consumer who has not attained the age of 21 as of the date of submission of the application under § 226.51(b)(1) or the date the credit line increase is requested by the consumer (or if no request has been made, the date the credit line increase is considered by the card issuer) under § 226.51(b)(2).

2. *Liability of cosigner, guarantor, or joint accountholder.* Sections 226.51(b)(1)(ii) and (b)(2) require the signature or written consent of a cosigner, guarantor, or joint accountholder agreeing either to be secondarily liable for any debt on the account incurred by the consumer before the consumer has attained the age of 21 or to be jointly liable with the consumer for any debt on the account. Sections 226.51(b)(1)(ii) and (b)(2) do not prohibit a card issuer from also requiring the cosigner, guarantor, or joint accountholder to assume liability for debts incurred after the consumer has attained the age of 21, consistent with any agreement made between the parties.

3. *Authorized users exempt.* If a consumer who has not attained the age of 21 is being added to another person's account as an authorized user and has no liability for debts incurred on the account, § 226.51(b)(1) and (b)(2) do not apply.

4. *Electronic application.* Consistent with § 226.5(a)(1)(iii), an application may be provided to the consumer in electronic form

without regard to the consumer consent or other provisions of the Electronic Signatures in Global and National Commerce Act (E-Sign Act) (15 U.S.C. 7001 *et seq.*) in the circumstances set forth in § 226.5a. The electronic submission of an application from a consumer or a consent to a credit line increase from a cosigner, guarantor, or joint accountholder to a card issuer would constitute a written application or consent for purposes of § 226.51(b) and would not be considered a consumer disclosure for purposes of the E-Sign Act.

51(b)(1) *Applications from young consumers.*

1. *Relation to Regulation B.* In considering an application or credit line increase on the credit card account of a consumer who is less than 21 years old, creditors must comply with the applicable rules in Regulation B (12 CFR part 202).

2. *Financial information.* Information regarding income and assets that satisfies the requirements of § 226.51(a) also satisfies the requirements of § 226.51(b)(1). See comment 51(a)1–4.

51(b)(2) *Credit line increases for young consumers.*

1. *Relation to Regulation B.* In considering an application or credit line increase on the credit card account of a consumer who is less than 21 years old, creditors must comply with the applicable rules in Regulation B (12 CFR part 202).

§ 226.52—*Limitations on Fees*

52(a) *Limitations prior to account opening and during first year after account opening.*

52(a)(1) *General rule.*

1. *Application.* The 25 percent limit in § 226.52(a)(1) applies to fees that the card issuer charges to the account as well as to fees that the card issuer requires the consumer to pay with respect to the account through other means (such as through a payment from the consumer's asset account to the card issuer or from another credit account provided by the card issuer). For example:

i. Assume that, under the terms of a credit card account, a consumer is required to pay \$120 in fees for the issuance or availability of credit at account opening. The consumer is also required to pay a cash advance fee that is equal to five percent of the cash advance and a late payment fee of \$15 if the required minimum periodic payment is not received by the payment due date (which is the twenty-fifth of the month). At account opening on January 1 of year one, the credit limit for the account is \$500. Section 226.52(a)(1) permits the card issuer to charge to the account the \$120 in fees for the issuance or availability of credit at account opening. On February 1 of year one, the consumer uses the account for a \$100 cash advance. Section 226.52(a)(1) permits the card issuer to charge a \$5 cash-advance fee to the account. On March 26 of year one, the card issuer has not received the consumer's required minimum periodic payment. Section 226.52(a)(2) permits the card issuer to charge a \$15 late payment fee to the account. On July 15 of year one, the consumer uses the account for a \$50 cash advance. Section 226.52(a)(1) does not permit

the card issuer to charge a \$2.50 cash advance fee to the account. Furthermore, § 226.52(a)(1) prohibits the card issuer from collecting the \$2.50 cash advance fee from the consumer by other means.

ii. Assume that, under the terms of a credit card account, a consumer is required to pay \$125 in fees for the issuance or availability of credit during the first year after account opening. At account opening on January 1 of year one, the credit limit for the account is \$500. Section 226.52(a)(1) permits the card issuer to charge the \$125 in fees to the account. However, § 226.52(a)(1) prohibits the card issuer from requiring the consumer to make payments to the card issuer for additional non-exempt fees with respect to the account prior to account opening or during the first year after account opening. Section 226.52(a)(1) also prohibits the card issuer from requiring the consumer to open a separate credit account with the card issuer to fund the payment of additional non-exempt fees prior to the opening of the credit card account or during the first year after the credit card account is opened.

iii. Assume that, on January 1 of year one, a consumer is required to pay a \$100 fee in order to apply for a credit card account. On January 5, the card issuer approves the consumer's application, assigns the account a credit limit of \$1,000, and provides the consumer with account-opening disclosures consistent with § 226.6. The date on which the account may first be used by the consumer to engage in transactions is January 5. The consumer is required to pay \$150 in fees for the issuance or availability of credit, which § 226.52(a)(1) permits the card issuer to charge to the account on January 5. However, because the \$100 application fee is subject to the 25 percent limit in § 226.52(a)(1), the card issuer is prohibited from requiring the consumer to pay any additional non-exempt fees with respect to the account until January 5 of year two.

2. *Fees that exceed 25 percent limit.* A card issuer that charges a fee to a credit card account that exceeds the 25 percent limit complies with § 226.52(a)(1) if the card issuer waives or removes the fee and any associated interest charges or credits the account for an amount equal to the fee and any associated interest charges within a reasonable amount of time but no later than the end of the billing cycle following the billing cycle during which the fee was charged. For example, assuming the facts in the example in comment 52(a)(1)–1.i. above, the card issuer complies with § 226.52(a)(1) if the card issuer charged the \$2.50 cash advance fee to the account on July 15 of year one but waived or removed the fee or credited the account for \$2.50 (plus any interest charges on that \$2.50) at the end of the billing cycle.

3. *Changes in credit limit during first year.*  
i. *Increases in credit limit.* If a card issuer increases the credit limit during the first year after the account is opened, § 226.52(a)(1) does not permit the card issuer to require the consumer to pay additional fees that would otherwise be prohibited (such as a fee for increasing the credit limit). For example, assume that, at account opening on January 1, the credit limit for a credit card account is \$400 and the consumer is required to pay

\$100 in fees for the issuance or availability of credit. On July 1, the card issuer increases the credit limit for the account to \$600. Section 226.52(a)(1) does not permit the card issuer to require the consumer to pay additional fees based on the increased credit limit.

ii. *Decreases in credit limit.* If a card issuer decreases the credit limit during the first year after the account is opened, § 226.52(a)(1) requires the card issuer to waive or remove any fees charged to the account that exceed 25 percent of the reduced credit limit or to credit the account for an amount equal to any fees the consumer was required to pay with respect to the account that exceed 25 percent of the reduced credit limit within a reasonable amount of time but no later than the end of the billing cycle following the billing cycle during which the credit limit was reduced. For example:

A. Assume that, at account opening on January 1, the credit limit for a credit card account is \$1,000 and the consumer is required to pay \$250 in fees for the issuance or availability of credit. The billing cycles for the account begin on the first day of the month and end on the last day of the month. On July 30, the card issuer decreases the credit limit for the account to \$500. Section 226.52(a)(1) requires the card issuer to waive or remove \$175 in fees from the account or to credit the account for an amount equal to \$175 within a reasonable amount of time but no later than August 31.

B. Assume that, on June 25 of year one, a consumer is required to pay a \$75 fee in order to apply for a credit card account. At account opening on July 1 of year one, the credit limit for the account is \$500 and the consumer is required to pay \$50 in fees for the issuance or availability of credit. The billing cycles for the account begin on the first day of the month and end on the last day of the month. On February 15 of year two, the card issuer decreases the credit limit for the account to \$250. Section 226.52(a)(1) requires the card issuer to waive or remove fees from the account or to credit the account for an amount equal to \$62.50 within a reasonable amount of time but no later than March 31 of year two.

4. *Date on which account may first be used by consumer to engage in transactions.*

i. *Methods of compliance.* For purposes of § 226.52(a)(1), an account is considered open no earlier than the date on which the account may first be used by the consumer to engage in transactions. A card issuer may consider an account open for purposes of § 226.52(a)(1) on any of the following dates:

A. The date the account is first used by the consumer for a transaction (such as when an account is established in connection with financing the purchase of goods or services).

B. The date the consumer complies with any reasonable activation procedures imposed by the card issuer for preventing fraud or unauthorized use of a new account (such as requiring the consumer to provide information that verifies his or her identity), provided that the account may be used for transactions on that date.

C. The date that is seven days after the card issuer mails or delivers to the consumer account-opening disclosures that comply

with § 226.6, provided that the consumer may use the account for transactions after complying with any reasonable activation procedures imposed by the card issuer for preventing fraud or unauthorized use of the new account (such as requiring the consumer to provide information that verifies his or her identity). If a card issuer has reasonable procedures designed to ensure that account-opening disclosures that comply with § 226.6 are mailed or delivered to consumers no later than a certain number of days after the card issuer establishes the account, the card issuer may add that number of days to the seven-day period for purposes of determining the date on which the account was opened.

ii. *Examples.*

A. Assume that, on July 1 of year one, a credit card account under an open-end (not home-secured) consumer credit plan is established in connection with financing the purchase of goods or services and a \$500 transaction is charged to the account by the consumer. The card issuer may consider the account open on July 1 of year one for purposes of § 226.52(a)(1). Accordingly, § 226.52(a)(1) ceases to apply to the account on July 1 of year two.

B. Assume that, on July 1 of year one, a card issuer approves a consumer's application for a credit card account under an open-end (not home-secured) consumer credit plan and establishes the account on its internal systems. On July 5, the card issuer mails or delivers to the consumer account-opening disclosures that comply with § 226.6. If the consumer may use the account for transactions on the date the consumer complies with any reasonable procedures imposed by the card issuer for preventing fraud or unauthorized use, the card issuer may consider the account open on July 12 of year one for purposes of § 226.52(a)(1). Accordingly, § 226.52(a)(1) ceases to apply to the account on July 12 of year two.

C. Same facts as in paragraph B above except that the card issuer has adopted reasonable procedures designed to ensure that account-opening disclosures that comply with § 226.6 are mailed or delivered to consumers no later than three days after an account is established on its systems. If the consumer may use the account for transactions on the date the consumer complies with any reasonable procedures imposed by the card issuer for preventing fraud or unauthorized use, the card issuer may consider the account open on July 11 of year one for purposes of § 226.52(a)(1). Accordingly, § 226.52(a)(1) ceases to apply to the account on July 11 of year two. However, if the consumer uses the account for a transaction or complies with the card issuer's reasonable procedures for preventing fraud or unauthorized use on July 8 of year one, the card issuer may, at its option, consider the account open on that date for purposes of § 226.52(a)(1) and § 226.52(a)(1) therefore ceases to apply to the account on July 8 of year two.

52(a)(2) *Fees not subject to limitations.*

1. *Covered fees.* Except as provided in § 226.52(a)(2), § 226.52(a) applies to any fees or other charges that a card issuer will or may require the consumer to pay with respect to a credit card account prior to account

opening and during the first year after account opening, other than charges attributable to periodic interest rates. For example, § 226.52(a) applies to:

- i. Fees that the consumer is required to pay for the issuance or availability of credit described in § 226.5a(b)(2), including any fee based on account activity or inactivity and any fee that a consumer is required to pay in order to receive a particular credit limit;
- ii. Fees for insurance described in § 226.4(b)(7) or debt cancellation or debt suspension coverage described in § 226.4(b)(10) written in connection with a credit transaction, if the insurance or debt cancellation or debt suspension coverage is required by the terms of the account;
- iii. Fees that the consumer is required to pay in order to engage in transactions using the account (such as cash advance fees, balance transfer fees, foreign transaction fees, and fees for using the account for purchases);
- iv. Fees that the consumer is required to pay for violating the terms of the account (except to the extent specifically excluded by § 226.52(a)(2)(i));
- v. Fixed finance charges; and
- vi. Minimum charges imposed if a charge would otherwise have been determined by applying a periodic interest rate to a balance except for the fact that such charge is smaller than the minimum.

2. *Fees the consumer is not required to pay.* Section 226.52(a)(2)(ii) provides that § 226.52(a) does not apply to fees that the consumer is not required to pay with respect to the account. For example, § 226.52(a) generally does not apply to fees for making an expedited payment (to the extent permitted by § 226.10(e)), fees for optional services (such as travel insurance), fees for reissuing a lost or stolen card, or statement reproduction fees.

3. *Security deposits.* A security deposit that is charged to a credit card account is a fee for purposes of § 226.52(a). In contrast, however, a security deposit is not subject to the 25 percent limit in § 226.52(a)(1) if it is not charged to the account. For example, § 226.52(a)(1) does not prohibit a card issuer from requiring a consumer to provide funds at account opening pledged as security for the account that exceed 25 percent of the credit limit at account opening so long as those funds are not obtained from the account.

*52(a)(3) Rule of construction.*

1. *Fees or charges otherwise prohibited by law.* Section 226.52(a) does not authorize the imposition or payment of fees or charges otherwise prohibited by law. For example, see 16 CFR 310.4(a)(4).

*52(b) Limitations on penalty fees.*

1. *Fees for violating the account terms or other requirements.* For purposes of § 226.52(b), a fee includes any charge imposed by a card issuer based on an act or omission that violates the terms of the account or any other requirements imposed by the card issuer with respect to the account, other than charges attributable to periodic interest rates. Accordingly, for purposes of § 226.52(b), a fee does not include charges attributable to an increase in an annual percentage rate based on an act or omission that violates the terms or other requirements of an account.

i. The following are examples of fees that are subject to the limitations in § 226.52(b) or are prohibited by § 226.52(b):

A. Late payment fees and any other fees imposed by a card issuer if an account becomes delinquent or if a payment is not received by a particular date.

B. Returned payment fees and any other fees imposed by a card issuer if a payment received via check, automated clearing house, or other payment method is returned.

C. Any fee or charge for an over-the-limit transaction as defined in § 226.56(a), to the extent the imposition of such a fee or charge is permitted by § 226.56.

D. Any fee imposed by a card issuer if payment on a check that accesses a credit card account is declined.

E. Any fee or charge for a transaction that the card issuer declines to authorize. See § 226.52(b)(2)(i)(B).

F. Any fee imposed by a card issuer based on account inactivity (including the consumer's failure to use the account for a particular number or dollar amount of transactions or a particular type of transaction). See § 226.52(b)(2)(i)(B).

G. Any fee imposed by a card issuer based on the closure or termination of an account. See § 226.52(b)(2)(i)(B).

ii. The following are examples of fees to which § 226.52(b) does not apply:

A. Balance transfer fees.

B. Cash advance fees.

C. Foreign transaction fees.

D. Annual fees and other fees for the issuance or availability of credit described in § 226.5a(b)(2), except to the extent that such fees are based on account inactivity. See § 226.52(b)(2)(i)(B).

E. Fees for insurance described in § 226.4(b)(7) or debt cancellation or debt suspension coverage described in § 226.4(b)(10) written in connection with a credit transaction, provided that such fees are not imposed as a result of a violation of the account terms or other requirements of an account.

F. Fees for making an expedited payment (to the extent permitted by § 226.10(e)).

G. Fees for optional services (such as travel insurance).

H. Fees for reissuing a lost or stolen card.

2. *Rounding to nearest whole dollar.* A card issuer may round any fee that complies with § 226.52(b) to the nearest whole dollar. For example, if § 226.52(b) permits a card issuer to impose a late payment fee of \$21.50, the card issuer may round that amount up to the nearest whole dollar and impose a late payment fee of \$22. However, if the late payment fee permitted by § 226.52(b) were \$21.49, the card issuer would not be permitted to round that amount up to \$22, although the card issuer could round that amount down and impose a late payment fee of \$21.

*52(b)(1) General rule.*

1. *Relationship between § 226.52(b)(1)(i), (b)(1)(ii), and (b)(2).*

i. *Relationship between § 226.52(b)(1)(i) and (b)(1)(ii).* A card issuer may impose a fee for violating the terms or other requirements of an account pursuant to either § 226.52(b)(1)(i) or (b)(1)(ii).

A. A card issuer that complies with the safe harbors in § 226.52(b)(1)(ii) is not

required to determine that its fees represent a reasonable proportion of the total costs incurred by the card issuer as a result of a type of violation under § 226.52(b)(1)(i).

B. A card issuer may impose a fee for one type of violation pursuant to § 226.52(b)(1)(i) and may impose a fee for a different type of violation pursuant to § 226.52(b)(1)(ii). For example, a card issuer may impose a late payment fee of \$30 based on a cost determination pursuant to § 226.52(b)(1)(i) but impose returned payment and over-the-limit fees of \$25 or \$35 pursuant to the safe harbors in § 226.52(b)(1)(ii).

C. A card issuer that previously based the amount of a penalty fee for a particular type of violation on a cost determination pursuant to § 226.52(b)(1)(i) may begin to impose a penalty fee for that type of violation that is consistent with § 226.52(b)(1)(ii) at any time (subject to the notice requirements in § 226.9), provided that the first fee imposed pursuant to § 226.52(b)(1)(ii) is consistent with § 226.52(b)(1)(ii)(A). For example, assume that a late payment occurs on January 15 and that, based on a cost determination pursuant to § 226.52(b)(1)(i), the card issuer imposes a \$30 late payment fee. Another late payment occurs on July 15. The card issuer may impose another \$30 late payment fee pursuant to § 226.52(b)(1)(i) or may impose a \$25 late payment fee pursuant to § 226.52(b)(1)(ii)(A). However, the card issuer may not impose a \$35 late payment fee pursuant to § 226.52(b)(1)(ii)(B). If the card issuer imposes a \$25 fee pursuant to § 226.52(b)(1)(ii)(A) for the July 15 late payment and another late payment occurs on September 15, the card issuer may impose a \$35 fee for the September 15 late payment pursuant to § 226.52(b)(1)(ii)(B).

ii. *Relationship between § 226.52(b)(1) and (b)(2).* Section 226.52(b)(1) does not permit a card issuer to impose a fee that is inconsistent with the prohibitions in § 226.52(b)(2). For example, if § 226.52(b)(2)(i) prohibits the card issuer from imposing a late payment fee that exceeds \$15, § 226.52(b)(1)(ii) does not permit the card issuer to impose a higher late payment fee.

*52(b)(1)(i) Fees based on costs.*

1. *Costs incurred as a result of violations.* Section 226.52(b)(1)(i) does not require a card issuer to base a fee on the costs incurred as a result of a specific violation of the terms or other requirements of an account. Instead, for purposes of § 226.52(b)(1)(i), a card issuer must have determined that a fee for violating the terms or other requirements of an account represents a reasonable proportion of the costs incurred by the card issuer as a result of that type of violation. A card issuer may make a single determination for all of its credit card portfolios or may make separate determinations for each portfolio. The factors relevant to this determination include:

i. The number of violations of a particular type experienced by the card issuer during a prior period of reasonable length (for example, a period of twelve months).

ii. The costs incurred by the card issuer during that period as a result of those violations.

iii. At the card issuer's option, the number of fees imposed by the card issuer as a result

of those violations during that period that the card issuer reasonably estimates it will be unable to collect. See comment 52(b)(1)(i)–5.

iv. At the card issuer's option, reasonable estimates for an upcoming period of changes in the number of violations of that type, the resulting costs, and the number of fees that the card issuer will be unable to collect. See illustrative examples in comments 52(b)(1)(i)–6 through –9.

2. *Amounts excluded from cost analysis.* The following amounts are not costs incurred by a card issuer as a result of violations of the terms or other requirements of an account for purposes of § 226.52(b)(1)(i):

i. Losses and associated costs (including the cost of holding reserves against potential losses and the cost of funding delinquent accounts).

ii. Costs associated with evaluating whether consumers who have not violated the terms or other requirements of an account are likely to do so in the future (such as the costs associated with underwriting new accounts). However, once a violation of the terms or other requirements of an account has occurred, the costs associated with preventing additional violations for a reasonable period of time are costs incurred by a card issuer as a result of violations of the terms or other requirements of an account for purposes of § 226.52(b)(1)(i).

3. *Third party charges.* As a general matter, amounts charged to the card issuer by a third party as a result of a violation of the terms or other requirements of an account are costs incurred by the card issuer for purposes of § 226.52(b)(1)(i). For example, if a card issuer is charged a specific amount by a third party for each returned payment, that amount is a cost incurred by the card issuer as a result of returned payments. However, if the amount is charged to the card issuer by an affiliate or subsidiary of the card issuer, the card issuer must have determined that the charge represents a reasonable proportion of the costs incurred by the affiliate or subsidiary as a result of the type of violation. For example, if an affiliate of a card issuer provides collection services to the card issuer on delinquent accounts, the card issuer must have determined that the amounts charged to the card issuer by the affiliate for such services represent a reasonable proportion of the costs incurred by the affiliate as a result of late payments.

4. *Amounts charged by other card issuers.* The fact that a card issuer's fees for violating the terms or other requirements of an account are comparable to fees assessed by other card issuers does not satisfy the requirements of § 226.52(b)(1)(i).

5. *Uncollected fees.* For purposes of § 226.52(b)(1)(i), a card issuer may consider fees that it is unable to collect when determining the appropriate fee amount. Fees that the card issuer is unable to collect include fees imposed on accounts that have been charged off by the card issuer, fees that have been discharged in bankruptcy, and fees that the card issuer is required to waive in order to comply with a legal requirement (such as a requirement imposed by 12 CFR part 226 or 50 U.S.C. app. 527). However, fees that the card issuer chooses not to impose or chooses not to collect (such as fees

the card issuer chooses to waive at the request of the consumer or under a workout or temporary hardship arrangement) are not relevant for purposes of this determination. See illustrative examples in comments 52(b)(2)(i)–6 through –9.

6. *Late payment fees.* i. *Costs incurred as a result of late payments.* For purposes of § 226.52(b)(1)(i), the costs incurred by a card issuer as a result of late payments include the costs associated with the collection of late payments, such as the costs associated with notifying consumers of delinquencies and resolving delinquencies (including the establishment of workout and temporary hardship arrangements).

ii. *Examples.*

A. Late payment fee based on past delinquencies and costs. Assume that, during year one, a card issuer experienced 1 million delinquencies and incurred \$26 million in costs as a result of those delinquencies. For purposes of § 226.52(b)(1)(i), a \$26 late payment fee would represent a reasonable proportion of the total costs incurred by the card issuer as a result of late payments during year two.

B. Adjustment based on fees card issuer is unable to collect. Same facts as above except that the card issuer imposed a late payment fee for each of the 1 million delinquencies experienced during year one but was unable to collect 25% of those fees (in other words, the card issuer was unable to collect 250,000 fees, leaving a total of 750,000 late payments for which the card issuer did collect or could have collected a fee). For purposes of § 226.52(b)(2)(i), a late payment fee of \$35 would represent a reasonable proportion of the total costs incurred by the card issuer as a result of late payments during year two.

C. Adjustment based on reasonable estimate of future changes. Same facts as paragraphs A. and B. above except the card issuer reasonably estimates that—based on past delinquency rates and other factors relevant to potential delinquency rates for year two—it will experience a 2% decrease in delinquencies during year two (in other words, 20,000 fewer delinquencies for a total of 980,000). The card issuer also reasonably estimates that it will be unable to collect the same percentage of fees (25%) during year two as during year one (in other words, the card issuer will be unable to collect 245,000 fees, leaving a total of 735,000 late payments for which the card issuer will be able to collect a fee). The card issuer also reasonably estimates that—based on past changes in costs incurred as a result of delinquencies and other factors relevant to potential costs for year two—it will experience a 5% increase in costs during year two (in other words, \$1.3 million in additional costs for a total of \$27.3 million). For purposes of § 226.52(b)(1)(i), a \$37 late payment fee would represent a reasonable proportion of the total costs incurred by the card issuer as a result of late payments during year two.

7. *Returned payment fees.* i. *Costs incurred as a result of returned payments.* For purposes of § 226.52(b)(1)(i), the costs incurred by a card issuer as a result of returned payments include:

A. Costs associated with processing returned payments and reconciling the card

issuer's systems and accounts to reflect returned payments;

B. Costs associated with investigating potential fraud with respect to returned payments; and

C. Costs associated with notifying the consumer of the returned payment and arranging for a new payment.

ii. *Examples.*

A. Returned payment fee based on past returns and costs. Assume that, during year one, a card issuer experienced 150,000 returned payments and incurred \$3.1 million in costs as a result of those returned payments. For purposes of § 226.52(b)(1)(i), a \$21 returned payment fee would represent a reasonable proportion of the total costs incurred by the card issuer as a result of returned payments during year two.

B. Adjustment based on fees card issuer is unable to collect. Same facts as above except that the card issuer imposed a returned payment fee for each of the 150,000 returned payments experienced during year one but was unable to collect 15% of those fees (in other words, the card issuer was unable to collect 22,500 fees, leaving a total of 127,500 returned payments for which the card issuer did collect or could have collected a fee). For purposes of § 226.52(b)(2)(i), a returned payment fee of \$24 would represent a reasonable proportion of the total costs incurred by the card issuer as a result of returned payments during year two.

C. Adjustment based on reasonable estimate of future changes. Same facts as paragraphs A. and B. above except the card issuer reasonably estimates that—based on past returned payment rates and other factors relevant to potential returned payment rates for year two—it will experience a 2% increase in returned payments during year two (in other words, 3,000 additional returned payments for a total of 153,000). The card issuer also reasonably estimates that it will be unable to collect 25% of returned payment fees during year two (in other words, the card issuer will be unable to collect 38,250 fees, leaving a total of 114,750 returned payments for which the card issuer will be able to collect a fee). The card issuer also reasonably estimates that—based on past changes in costs incurred as a result of returned payments and other factors relevant to potential costs for year two—it will experience a 1% decrease in costs during year two (in other words, a \$31,000 reduction in costs for a total of \$3.069 million). For purposes of § 226.52(b)(1)(i), a \$27 returned payment fee would represent a reasonable proportion of the total costs incurred by the card issuer as a result of returned payments during year two.

8. *Over-the-limit fees.* i. *Costs incurred as a result of over-the-limit transactions.* For purposes of § 226.52(b)(1)(i), the costs incurred by a card issuer as a result of over-the-limit transactions include:

A. Costs associated with determining whether to authorize over-the-limit transactions; and

B. Costs associated with notifying the consumer that the credit limit has been exceeded and arranging for payments to reduce the balance below the credit limit.

ii. *Costs not incurred as a result of over-the-limit transactions.* For purposes of

§ 226.52(b)(1)(i), costs associated with obtaining the affirmative consent of consumers to the card issuer's payment of transactions that exceed the credit limit consistent with § 226.56 are not costs incurred by a card issuer as a result of over-the-limit transactions.

iii. *Examples.*

A. Over-the-limit fee based on past fees and costs. Assume that, during year one, a card issuer authorized 600,000 over-the-limit transactions and incurred \$4.5 million in costs as a result of those over-the-limit transactions. However, because of the affirmative consent requirements in § 226.56, the card issuer was only permitted to impose 200,000 over-the-limit fees during year one. For purposes of § 226.52(b)(1)(i), a \$23 over-the-limit fee would represent a reasonable proportion of the total costs incurred by the card issuer as a result of over-the-limit transactions during year two.

B. Adjustment based on fees card issuer is unable to collect. Same facts as above except that the card issuer was unable to collect 30% of the 200,000 over-the-limit fees imposed during year one (in other words, the card issuer was unable to collect 60,000 fees, leaving a total of 140,000 over-the-limit transactions for which the card issuer did collect or could have collected a fee). For purposes of § 226.52(b)(2)(i), an over-the-limit fee of \$32 would represent a reasonable proportion of the total costs incurred by the card issuer as a result of over-the-limit transactions during year two.

C. Adjustment based on reasonable estimate of future changes. Same facts as paragraphs A. and B. above except the card issuer reasonably estimates that—based on past over-the-limit transaction rates, the percentages of over-the-limit transactions that resulted in an over-the-limit fee in the past (consistent with § 226.56), and factors relevant to potential changes in those rates and percentages for year two—it will authorize approximately the same number of over-the-limit transactions during year two (600,000) and impose approximately the same number of over-the-limit fees (200,000). The card issuer also reasonably estimates that it will be unable to collect the same percentage of fees (30%) during year two as during year one (in other words, the card issuer was unable to collect 60,000 fees, leaving a total of 140,000 over-the-limit transactions for which the card issuer will be able to collect a fee). The card issuer also reasonably estimates that—based on past changes in costs incurred as a result of over-the-limit transactions and other factors relevant to potential costs for year two—it will experience a 6% decrease in costs during year two (in other words, a \$270,000 reduction in costs for a total of \$4.23 million). For purposes of § 226.52(b)(1)(i), a \$30 over-the-limit fee would represent a reasonable proportion of the total costs incurred by the card issuer as a result of over-the-limit transactions during year two.

9. *Declined access check fees.* i. *Costs incurred as a result of declined access checks.* For purposes of § 226.52(b)(1)(i), the costs incurred by a card issuer as a result of declining payment on a check that accesses a credit card account include:

A. Costs associated with determining whether to decline payment on access checks;

B. Costs associated with processing declined access checks and reconciling the card issuer's systems and accounts to reflect declined access checks;

C. Costs associated with investigating potential fraud with respect to declined access checks; and

D. Costs associated with notifying the consumer and the merchant or other party that accepted the access check that payment on the check has been declined.

ii. *Example.* Assume that, during year one, a card issuer declined 100,000 access checks and incurred \$2 million in costs as a result of those declined checks. The card issuer imposed a fee for each declined access check but was unable to collect 10% of those fees (in other words, the card issuer was unable to collect 10,000 fees, leaving a total of 90,000 declined access checks for which the card issuer did collect or could have collected a fee). For purposes of § 226.52(b)(1)(i), a \$22 declined access check fee would represent a reasonable proportion of the total costs incurred by the card issuer as a result of declined access checks during year two.

52(b)(1)(ii) *Safe harbors.*

1. *Multiple violations of same type.*

i. *Same billing cycle or next six billing cycles.* A card issuer cannot impose a fee for a violation pursuant to § 226.52(b)(1)(ii)(B) unless a fee has previously been imposed for the same type of violation pursuant to § 226.52(b)(1)(ii)(A). Once a fee has been imposed for a violation pursuant to § 226.52(b)(1)(ii)(A), the card issuer may impose a fee pursuant to § 226.52(b)(1)(ii)(B) for any subsequent violation of the same type until that type of violation has not occurred for a period of six consecutive complete billing cycles. A fee has been imposed for purposes of § 226.52(b)(1)(ii) even if the card issuer waives or rebates all or part of the fee.

A. *Late payments.* For purposes of § 226.52(b)(1)(ii), a late payment occurs during the billing cycle in which the payment may first be treated as late consistent with the requirements of 12 CFR Part 226 and the terms or other requirements of the account.

B. *Returned payments.* For purposes of § 226.52(b)(1)(ii), a returned payment occurs during the billing cycle in which the payment is returned to the card issuer.

C. *Transactions that exceed the credit limit.* For purposes of § 226.52(b)(1)(ii), a transaction that exceeds the credit limit for an account occurs during the billing cycle in which the transaction occurs or is authorized by the card issuer.

D. *Declined access checks.* For purposes of § 226.52(b)(1)(ii), a check that accesses a credit card account is declined during the billing cycle in which the card issuer declines payment on the check.

ii. *Relationship to §§ 226.52(b)(2)(ii) and 226.56(j)(1).* If multiple violations are based on the same event or transaction such that § 226.52(b)(2)(ii) prohibits the card issuer from imposing more than one fee, the event or transaction constitutes a single violation for purposes of § 226.52(b)(1)(ii).

Furthermore, consistent with § 226.56(j)(1)(i), no more than one violation for exceeding an account's credit limit can occur during a single billing cycle for purposes of § 226.52(b)(1)(ii). However, § 226.52(b)(2)(ii) does not prohibit a card issuer from imposing fees for exceeding the credit limit in consecutive billing cycles based on the same over-the-limit transaction to the extent permitted by § 226.56(j)(1). In these circumstances, the second and third over-the-limit fees permitted by § 226.56(j)(1) may be imposed pursuant to § 226.52(b)(1)(ii)(B). See comment 52(b)(2)(ii)–1.

iii. *Examples.* The following examples illustrate the application of § 226.52(b)(1)(ii)(A) and (b)(1)(ii)(B) with respect to credit card accounts under an open-end (not home-secured) consumer credit plan that are not charge card accounts. For purposes of these examples, assume that the billing cycles for the account begin on the first day of the month and end on the last day of the month and that the payment due date for the account is the twenty-fifth day of the month.

A. *Violations of same type (late payments).* A required minimum periodic payment of \$50 is due on March 25. On March 26, a late payment has occurred because no payment has been received. Accordingly, consistent with § 226.52(b)(1)(ii)(A), the card issuer imposes a \$25 late payment fee on March 26. In order for the card issuer to impose a \$35 late payment fee pursuant to § 226.52(b)(1)(ii)(B), a second late payment must occur during the April, May, June, July, August, or September billing cycles.

(1) The card issuer does not receive any payment during the March billing cycle. A required minimum periodic payment of \$100 is due on April 25. On April 20, the card issuer receives a \$50 payment. No further payment is received during the April billing cycle. Accordingly, consistent with § 226.52(b)(1)(ii)(B), the card issuer may impose a \$35 late payment fee on April 26. Furthermore, the card issuer may impose a \$35 late payment fee for any late payment that occurs during the May, June, July, August, September, or October billing cycles.

(2) Same facts as in paragraph A. above. On March 30, the card issuer receives a \$50 payment and the required minimum periodic payments for the April, May, June, July, August, and September billing cycles are received on or before the payment due date. A required minimum periodic payment of \$60 is due on October 25. On October 26, a late payment has occurred because the required minimum periodic payment due on October 25 has not been received. However, because this late payment did not occur during the six billing cycles following the March billing cycle, § 226.52(b)(1)(ii) only permits the card issuer to impose a late payment fee of \$25.

B. *Violations of different types (late payment and over the credit limit).* The credit limit for an account is \$1,000. Consistent with § 226.56, the consumer has affirmatively consented to the payment of transactions that exceed the credit limit. A required minimum periodic payment of \$30 is due on August 25. On August 26, a late payment has occurred because no payment has been received.

Accordingly, consistent with § 226.52(b)(1)(ii)(A), the card issuer imposes a \$25 late payment fee on August 26. On August 30, the card issuer receives a \$30 payment. On September 10, a transaction causes the account balance to increase to \$1,150, which exceeds the account's \$1,000 credit limit. On September 11, a second transaction increases the account balance to \$1,350. On September 23, the card issuer receives the \$50 required minimum periodic payment due on September 25, which reduces the account balance to \$1,300. On September 30, the card issuer imposes a \$25 over-the-limit fee, consistent with § 226.52(b)(1)(ii)(A). On October 26, a late payment has occurred because the \$60 required minimum periodic payment due on October 25 has not been received.

Accordingly, consistent with § 226.52(b)(1)(ii)(B), the card issuer imposes a \$35 late payment fee on October 26.

C. *Violations of different types (late payment and returned payment).* A required minimum periodic payment of \$50 is due on July 25. On July 26, a late payment has occurred because no payment has been received. Accordingly, consistent with § 226.52(b)(1)(ii)(A), the card issuer imposes a \$25 late payment fee on July 26. On July 30, the card issuer receives a \$50 payment. A required minimum periodic payment of \$50 is due on August 25. On August 24, a \$50 payment is received. On August 27, the \$50 payment is returned to the card issuer for insufficient funds. In these circumstances, § 226.52(b)(2)(ii) permits the card issuer to impose either a late payment fee or a returned payment fee but not both because the late payment and the returned payment result from the same event or transaction. Accordingly, for purposes of § 226.52(b)(1)(ii), the event or transaction constitutes a single violation. However, if the card issuer imposes a late payment fee, § 226.52(b)(1)(ii)(B) permits the issuer to impose a fee of \$35 because the late payment occurred during the six billing cycles following the July billing cycle. In contrast, if the card issuer imposes a returned payment fee, the amount of the fee may be no more than \$25 pursuant to § 226.52(b)(1)(ii)(A).

2. *Adjustments based on Consumer Price Index.* For purposes of § 226.52(b)(1)(ii)(A) and (b)(1)(ii)(B), the Board shall calculate each year price level adjusted amounts using the Consumer Price Index in effect on June 1 of that year. When the cumulative change in the adjusted minimum value derived from applying the annual Consumer Price level to the current amounts in § 226.52(b)(1)(ii)(A) and (b)(1)(ii)(B) has risen by a whole dollar, those amounts will be increased by \$1.00. Similarly, when the cumulative change in the adjusted minimum value derived from applying the annual Consumer Price level to the current amounts in § 226.52(b)(1)(ii)(A) and (b)(1)(ii)(B) has decreased by a whole dollar, those amounts will be decreased by \$1.00. The Board will publish adjustments to the amounts in § 226.52(b)(1)(ii)(A) and (b)(1)(ii)(B).

3. *Delinquent balance for charge card accounts.* Section 226.52(b)(1)(ii)(C) provides that, when a charge card issuer that requires payment of outstanding balances in full at

the end of each billing cycle has not received the required payment for two or more consecutive billing cycles, the card issuer may impose a late payment fee that does not exceed three percent of the delinquent balance. For purposes of § 226.52(b)(1)(ii)(C), the delinquent balance is any previously billed amount that remains unpaid at the time the late payment fee is imposed pursuant to § 226.52(b)(1)(ii)(C). Consistent with § 226.52(b)(2)(ii), a charge card issuer that imposes a fee pursuant to § 226.52(b)(1)(ii)(C) with respect to a late payment may not impose a fee pursuant to § 226.52(b)(1)(ii)(B) with respect to the same late payment. The following examples illustrate the application of § 226.52(b)(1)(ii)(C):

i. Assume that a charge card issuer requires payment of outstanding balances in full at the end of each billing cycle and that the billing cycles for the account begin on the first day of the month and end on the last day of the month. At the end of the June billing cycle, the account has a balance of \$1,000. On July 5, the card issuer provides a periodic statement disclosing the \$1,000 balance consistent with § 226.7. During the July billing cycle, the account is used for \$300 in transactions, increasing the balance to \$1,300. At the end of the July billing cycle, no payment has been received and the card issuer imposes a \$25 late payment fee consistent with § 226.52(b)(1)(ii)(A). On August 5, the card issuer provides a periodic statement disclosing the \$1,325 balance consistent with § 226.7. During the August billing cycle, the account is used for \$200 in transactions, increasing the balance to \$1,525. At the end of the August billing cycle, no payment has been received. Consistent with § 226.52(b)(1)(ii)(C), the card issuer may impose a late payment fee of \$40, which is 3% of the \$1,325 balance that was due at the end of the August billing cycle. Section 226.52(b)(1)(ii)(C) does not permit the card issuer to include the \$200 in transactions that occurred during the August billing cycle.

ii. Same facts as above except that, on August 25, a \$100 payment is received. Consistent with § 226.52(b)(1)(ii)(C), the card issuer may impose a late payment fee of \$37, which is 3% of the unpaid portion of the \$1,325 balance that was due at the end of the August billing cycle (\$1,225).

iii. Same facts as in paragraph A. above except that, on August 25, a \$200 payment is received. Consistent with § 226.52(b)(1)(ii)(C), the card issuer may impose a late payment fee of \$34, which is 3% of the unpaid portion of the \$1,325 balance that was due at the end of the August billing cycle (\$1,125). In the alternative, the card issuer may impose a late payment fee of \$35 consistent with § 226.52(b)(1)(ii)(B). However, § 226.52(b)(2)(ii) prohibits the card issuer from imposing both fees.

*52(b)(2) Prohibited fees.*

1. *Relationship to § 226.52(b)(1).* A card issuer does not comply with § 226.52(b) if it imposes a fee that is inconsistent with the prohibitions in § 226.52(b)(2). Thus, the prohibitions in § 226.52(b)(2) apply even if a fee is consistent with § 226.52(b)(1)(i) or (b)(1)(ii). For example, even if a card issuer

has determined for purposes of § 226.52(b)(1)(i) that a \$27 fee represents a reasonable proportion of the total costs incurred by the card issuer as a result of a particular type of violation, § 226.52(b)(2)(i) prohibits the card issuer from imposing that fee if the dollar amount associated with the violation is less than \$27. Similarly, even if § 226.52(b)(1)(ii) permits a card issuer to impose a \$25 fee, § 226.52(b)(2)(i) prohibits the card issuer from imposing that fee if the dollar amount associated with the violation is less than \$25.

*52(b)(2)(i) Fees that exceed dollar amount associated with violation.*

1. *Late payment fees.* For purposes of § 226.52(b)(2)(i), the dollar amount associated with a late payment is the amount of the required minimum periodic payment due immediately prior to assessment of the late payment fee. Thus, § 226.52(b)(2)(i)(A) prohibits a card issuer from imposing a late payment fee that exceeds the amount of that required minimum periodic payment. For example:

i. Assume that a \$15 required minimum periodic payment is due on September 25. The card issuer does not receive any payment on or before September 25. On September 26, the card issuer imposes a late payment fee. For purposes of § 226.52(b)(2)(i), the dollar amount associated with the late payment is the amount of the required minimum periodic payment due on September 25 (\$15). Thus, under § 226.52(b)(2)(i)(A), the amount of that fee cannot exceed \$15 (even if a higher fee would be permitted under § 226.52(b)(1)).

ii. Same facts as above except that, on September 25, the card issuer receives a \$10 payment. No further payments are received. On September 26, the card issuer imposes a late payment fee. For purposes of § 226.52(b)(2)(i), the dollar amount associated with the late payment is the full amount of the required minimum periodic payment due on September 25 (\$15), rather than the unpaid portion of that payment (\$5). Thus, under § 226.52(b)(2)(i)(A), the amount of the late payment fee cannot exceed \$15 (even if a higher fee would be permitted under § 226.52(b)(1)).

iii. Assume that a \$15 required minimum periodic payment is due on October 28 and the billing cycle for the account closes on October 31. The card issuer does not receive any payment on or before November 3. On November 3, the card issuer determines that the required minimum periodic payment due on November 28 is \$50. On November 5, the card issuer imposes a late payment fee. For purposes of § 226.52(b)(2)(i), the dollar amount associated with the late payment is the amount of the required minimum periodic payment due on October 28 (\$15), rather than the amount of the required minimum periodic payment due on November 28 (\$50). Thus, under § 226.52(b)(2)(i)(A), the amount of that fee cannot exceed \$15 (even if a higher fee would be permitted under § 226.52(b)(1)).

2. *Returned payment fees.* For purposes of § 226.52(b)(2)(i), the dollar amount associated with a returned payment is the amount of the required minimum periodic payment due immediately prior to the date on which the



payment is returned to the card issuer. Thus, § 226.52(b)(2)(i)(A) prohibits a card issuer from imposing a returned payment fee that exceeds the amount of that required minimum periodic payment. However, if a payment has been returned and is submitted again for payment by the card issuer, there is no additional dollar amount associated with a subsequent return of that payment and § 226.52(b)(2)(i)(B) prohibits the card issuer from imposing an additional returned payment fee. For example:

i. Assume that the billing cycles for an account begin on the first day of the month and end on the last day of the month and that the payment due date is the twenty-fifth day of the month. A minimum payment of \$15 is due on March 25. The card issuer receives a check for \$100 on March 23, which is returned to the card issuer for insufficient funds on March 26. For purposes of § 226.52(b)(2)(i), the dollar amount associated with the returned payment is the amount of the required minimum periodic payment due on March 25 (\$15). Thus, § 226.52(b)(2)(i)(A) prohibits the card issuer from imposing a returned payment fee that exceeds \$15 (even if a higher fee would be permitted under § 226.52(b)(1)). Furthermore, § 226.52(b)(2)(ii) prohibits the card issuer from assessing both a late payment fee and a returned payment fee in these circumstances. See comment 52(b)(2)(ii)-1.

ii. Same facts as above except that the card issuer receives the \$100 check on March 31 and the check is returned for insufficient funds on April 2. The minimum payment due on April 25 is \$30. For purposes of § 226.52(b)(2)(i), the dollar amount associated with the returned payment is the amount of the required minimum periodic payment due on March 25 (\$15), rather than the amount of the required minimum periodic payment due on April 25 (\$30). Thus, § 226.52(b)(2)(i)(A) prohibits the card issuer from imposing a returned payment fee that exceeds \$15 (even if a higher fee would be permitted under § 226.52(b)(1)). Furthermore, § 226.52(b)(2)(ii) prohibits the card issuer from assessing both a late payment fee and a returned payment fee in these circumstances. See comment 52(b)(2)(ii)-1.

iii. Same facts as paragraph i. above except that, on March 28, the card issuer presents the \$100 check for payment a second time. On April 1, the check is again returned for insufficient funds. Section 226.52(b)(2)(i)(B) prohibits the card issuer from imposing a returned payment fee based on the return of the payment on April 1.

iv. Assume that the billing cycles for an account begin on the first day of the month and end on the last day of the month and that the payment due date is the twenty-fifth day of the month. A minimum payment of \$15 is due on August 25. The card issuer receives a check for \$15 on August 23, which is not returned. The card issuer receives a check for \$50 on September 5, which is returned to the card issuer for insufficient funds on September 7. Section 226.52(b)(2)(i)(B) does not prohibit the card issuer from imposing a returned payment fee in these circumstances. Instead, for purposes of § 226.52(b)(2)(i), the dollar amount associated with the returned payment is the amount of the required

minimum periodic payment due on August 25 (\$15). Thus, § 226.52(b)(2)(i)(A) prohibits the card issuer from imposing a returned payment fee that exceeds \$15 (even if a higher fee would be permitted under § 226.52(b)(1)).

3. *Over-the-limit fees.* For purposes of § 226.52(b)(2)(i), the dollar amount associated with extensions of credit in excess of the credit limit for an account is the total amount of credit extended by the card issuer in excess of the credit limit during the billing cycle in which the over-the-limit fee is imposed. Thus, § 226.52(b)(2)(i)(A) prohibits a card issuer from imposing an over-the-limit fee that exceeds that amount. Nothing in § 226.52(b) permits a card issuer to impose an over-the-limit fee if imposition of the fee is inconsistent with § 226.56. The following examples illustrate the application of § 226.52(b)(2)(i)(A) to over-the-limit fees:

i. Assume that the billing cycles for a credit card account with a credit limit of \$5,000 begin on the first day of the month and end on the last day of the month. Assume also that, consistent with § 226.56, the consumer has affirmatively consented to the payment of transactions that exceed the credit limit. On March 1, the account has a \$4,950 balance. On March 6, a \$60 transaction is charged to the account, increasing the balance to \$5,010. On March 25, a \$5 transaction is charged to the account, increasing the balance to \$5,015. On the last day of the billing cycle (March 31), the card issuer imposes an over-the-limit fee. For purposes of § 226.52(b)(2)(i), the dollar amount associated with the extensions of credit in excess of the credit limit during the March billing cycle (\$15). Thus, § 226.52(b)(2)(i)(A) prohibits the card issuer from imposing an over-the-limit fee that exceeds \$15 (even if a higher fee would be permitted under § 226.52(b)(1)).

ii. Same facts as above except that, on March 26, the card issuer receives a payment of \$20, reducing the balance below the credit limit to \$4,995. Nevertheless, for purposes of § 226.52(b)(2)(i), the dollar amount associated with the extensions of credit in excess of the credit limit is the total amount of credit extended by the card issuer in excess of the credit limit during the March billing cycle (\$15). Thus, consistent with § 226.52(b)(2)(i)(A), the card issuer may impose an over-the-limit fee of \$15.

4. *Declined access check fees.* For purposes of § 226.52(b)(2)(i), the dollar amount associated with declining payment on a check that accesses a credit card account is the amount of the check. Thus, when a check that accesses a credit card account is declined, § 226.52(b)(2)(i)(A) prohibits a card issuer from imposing a fee that exceeds the amount of that check. For example, assume that a check that accesses a credit card account is used as payment for a \$50 transaction, but payment on the check is declined by the card issuer because the transaction would have exceeded the credit limit for the account. For purposes of § 226.52(b)(2)(i), the dollar amount associated with the declined check is the amount of the check (\$50). Thus, § 226.52(b)(2)(i)(A) prohibits the card issuer from imposing a fee

that exceeds \$50. However, the amount of this fee must also comply with § 226.52(b)(1)(i) or (b)(1)(ii).

5. *Inactivity fees.* Section 226.52(b)(2)(i)(B)(2) prohibits a card issuer from imposing a fee with respect to a credit card account under an open-end (not home-secured) consumer credit plan based on inactivity on that account (including the consumer's failure to use the account for a particular number or dollar amount of transactions or a particular type of transaction). For example, § 226.52(b)(2)(i)(B)(2) prohibits a card issuer from imposing a \$50 fee when a credit card account under an open-end (not home-secured) consumer credit plan is not used for at least \$2,000 in purchases over the course of a year. Similarly, § 226.52(b)(2)(i)(B)(2) prohibits a card issuer from imposing a \$50 annual fee on all accounts of a particular type but waiving the fee on any account that is used for at least \$2,000 in purchases over the course of a year if the card issuer promotes the waiver or rebate of the annual fee for purposes of § 226.55(e). However, if the card issuer does not promote the waiver or rebate of the annual fee for purposes of § 226.55(e), § 226.52(b)(2)(i)(B)(2) does not prohibit a card issuer from considering account activity along with other factors when deciding whether to waive or rebate annual fees on individual accounts (such as in response to a consumer's request).

6. *Closed account fees.* Section 226.52(b)(2)(i)(B)(3) prohibits a card issuer from imposing a fee based on the closure or termination of an account. For example, 226.52(b)(2)(i)(B)(3) prohibits a card issuer from:

i. Imposing a one-time fee to consumers who close their accounts.

ii. Imposing a periodic fee (such as an annual fee, a monthly maintenance fee, or a closed account fee) after an account is closed or terminated if that fee was not imposed prior to closure or termination. This prohibition applies even if the fee was disclosed prior to closure or termination. See also comment 55(d)-1.

iii. Increasing a periodic fee (such as an annual fee or a monthly maintenance fee) after an account is closed or terminated. However, a card issuer is not prohibited from continuing to impose a periodic fee that was imposed before the account was closed or terminated.

52(b)(2)(ii) *Multiple fees based on single event or transaction.*

1. *Single event or transaction.* Section 226.52(b)(2)(ii) prohibits a card issuer from imposing more than one fee for violating the terms or other requirements of an account based on a single event or transaction. If § 226.56(j)(1) permits a card issuer to impose fees for exceeding the credit limit in consecutive billing cycles based on the same over-the-limit transaction, those fees are not based on a single event or transaction for purposes of § 226.52(b)(2)(ii). The following examples illustrate the application of § 226.52(b)(2)(ii). Assume for purposes of these examples that the billing cycles for a credit card account begin on the first day of the month and end on the last day of the month and that the payment due date for the account is the twenty-fifth day of the month.

i. Assume that the required minimum periodic payment due on March 25 is \$20. On March 26, the card issuer has not received any payment and imposes a late payment fee. Consistent with §§ 226.52(b)(1)(ii)(A) and (b)(2)(i), the card issuer may impose a \$20 late payment fee on March 26. However, § 226.52(b)(2)(ii) prohibits the card issuer from imposing an additional late payment fee if the \$20 minimum payment has not been received by a subsequent date (such as March 31).

A. On April 3, the card issuer provides a periodic statement disclosing that a \$70 required minimum periodic payment is due on April 25. This minimum payment includes the \$20 minimum payment due on March 25 and the \$20 late payment fee imposed on March 26. On April 20, the card issuer receives a \$20 payment. No additional payments are received during the April billing cycle. Section 226.52(b)(2)(ii) does not prohibit the card issuer from imposing a late payment fee based on the consumer's failure to make the \$70 required minimum periodic payment on or before April 25. Accordingly, consistent with § 226.52(b)(1)(ii)(B) and (b)(2)(i), the card issuer may impose a \$35 late payment fee on April 26.

B. On April 3, the card issuer provides a periodic statement disclosing that a \$20 required minimum periodic payment is due on April 25. This minimum payment does not include the \$20 minimum payment due on March 25 or the \$20 late payment fee imposed on March 26. On April 20, the card issuer receives a \$20 payment. No additional payments are received during the April billing cycle. Because the card issuer has received the required minimum periodic payment due on April 25 and because § 226.52(b)(2)(ii) prohibits the card issuer from imposing a second late payment fee based on the consumer's failure to make the \$20 minimum payment due on March 25, the card issuer cannot impose a late payment fee in these circumstances.

ii. Assume that the required minimum periodic payment due on March 25 is \$30.

A. On March 25, the card issuer receives a check for \$50, but the check is returned for insufficient funds on March 27. Consistent with §§ 226.52(b)(1)(ii)(A) and (b)(2)(i)(A), the card issuer may impose a late payment fee of \$25 or a returned payment fee of \$25. However, § 226.52(b)(2)(ii) prohibits the card issuer from imposing both fees because those fees would be based on a single event or transaction.

B. Same facts as paragraph ii.A. above except that that card issuer receives the \$50 check on March 27 and the check is returned for insufficient funds on March 29. Consistent with §§ 226.52(b)(1)(ii)(A) and (b)(2)(i)(A), the card issuer may impose a late payment fee of \$25 or a returned payment fee of \$25. However, § 226.52(b)(2)(ii) prohibits the card issuer from imposing both fees because those fees would be based on a single event or transaction. If no payment is received on or before the next payment due date (April 25), § 226.52(b)(2)(ii) does not prohibit the card issuer from imposing a late payment fee.

iii. Assume that the required minimum periodic payment due on July 25 is \$30. On

July 10, the card issuer receives a \$50 payment, which is not returned. On July 20, the card issuer receives a \$100 payment, which is returned for insufficient funds on July 24. Consistent with § 226.52(b)(1)(ii)(A) and (b)(2)(i)(A), the card issuer may impose a returned payment fee of \$25. Nothing in § 226.52(b)(2)(ii) prohibits the imposition of this fee.

iv. Assume that the credit limit for an account is \$1,000 and that, consistent with § 226.56, the consumer has affirmatively consented to the payment of transactions that exceed the credit limit. On March 31, the balance on the account is \$970 and the card issuer has not received the \$35 required minimum periodic payment due on March 25. On that same date (March 31), a \$70 transaction is charged to the account, which increases the balance to \$1,040. Consistent with § 226.52(b)(1)(ii)(A) and (b)(2)(i)(A), the card issuer may impose a late payment fee of \$25 and an over-the-limit fee of \$25. Section 226.52(b)(2)(ii) does not prohibit the imposition of both fees because those fees are based on different events or transactions. No additional transactions are charged to the account during the March, April, or May billing cycles. If the account balance remains more than \$35 above the credit limit on April 26, the card issuer may impose an over-the-limit fee of \$35 pursuant to § 226.52(b)(1)(ii)(B), to the extent consistent with § 226.56(j)(1). Furthermore, if the account balance remains more than \$35 above the credit limit on May 26, the card issuer may again impose an over-the-limit fee of \$35 pursuant to § 226.52(b)(1)(ii)(B), to the extent consistent with § 226.56(j)(1). Thereafter, § 226.56(j)(1) does not permit the card issuer to impose additional over-the-limit fees unless another over-the-limit transaction occurs. However, if an over-the-limit transaction occurs during the six billing cycles following the May billing cycle, the card issuer may impose an over-the-limit fee of \$35 pursuant to § 226.52(b)(1)(ii)(B).

v. Assume that the credit limit for an account is \$5,000 and that, consistent with § 226.56, the consumer has affirmatively consented to the payment of transactions that exceed the credit limit. On July 23, the balance on the account is \$4,950. On July 24, the card issuer receives the \$100 required minimum periodic payment due on July 25, reducing the balance to \$4,850. On July 26, a \$75 transaction is charged to the account, which increases the balance to \$4,925. On July 27, the \$100 payment is returned for insufficient funds, increasing the balance to \$5,025. Consistent with §§ 226.52(b)(1)(ii)(A) and (b)(2)(i)(A), the card issuer may impose a returned payment fee of \$25 or an over-the-limit fee of \$25. However, § 226.52(b)(2)(ii) prohibits the card issuer from imposing both fees because those fees would be based on a single event or transaction.

vi. Assume that the required minimum periodic payment due on March 25 is \$50. On March 20, the card issuer receives a check for \$50, but the check is returned for insufficient funds on March 22. Consistent with §§ 226.52(b)(1)(ii)(A) and (b)(2)(i)(A), the card issuer may impose a returned payment fee of \$25. On March 25, the card issuer receives a second check for \$50, but

the check is returned for insufficient funds on March 27. Consistent with §§ 226.52(b)(1)(ii)(A), (b)(1)(ii)(B), and (b)(2)(i)(A), the card issuer may impose a late payment fee of \$25 or a returned payment fee of \$35. However, § 226.52(b)(2)(ii) prohibits the card issuer from imposing both fees because those fees would be based on a single event or transaction.

vii. Assume that the required minimum periodic payment due on February 25 is \$100. On February 25, the card issuer receives a check for \$100. On March 3, the card issuer provides a periodic statement disclosing that a \$120 required minimum periodic payment is due on March 25. On March 4, the \$100 check is returned to the card issuer for insufficient funds. Consistent with §§ 226.52(b)(1)(ii)(A) and (b)(2)(i)(A), the card issuer may impose a late payment fee of \$25 or a returned payment fee of \$25 with respect to the \$100 payment. However, § 226.52(b)(2)(ii) prohibits the card issuer from imposing both fees because those fees would be based on a single event or transaction. On March 20, the card issuer receives a \$120 check, which is not returned. No additional payments are received during the March billing cycle. Because the card issuer has received the required minimum periodic payment due on March 25 and because § 226.52(b)(2)(ii) prohibits the card issuer from imposing a second fee based on the \$100 payment that was returned for insufficient funds, the card issuer cannot impose a late payment fee in these circumstances.

#### § 226.53—Allocation of Payments

\* \* \* \* \*

4. *Balances with the same rate.* When the same annual percentage rate applies to more than one balance on an account and a different annual percentage rate applies to at least one other balance on that account, § 226.53 generally does not require that any particular method be used when allocating among the balances with the same annual percentage rate. Under these circumstances, a card issuer may treat the balances with the same rate as a single balance or separate balances. See example in comment 53–5.iv. However, when a balance on a credit card account is subject to a deferred interest or similar program that provides that a consumer will not be obligated to pay interest that accrues on the balance if the balance is paid in full prior to the expiration of a specified period of time, that balance must be treated as a balance with an annual percentage rate of zero for purposes of § 226.53 during that period of time. For example, if an account has a \$1,000 purchase balance and a \$2,000 balance that is subject to a deferred interest program that expires on July 1 and a 15% annual percentage rate applies to both, the balances must be treated as balances with different rates for purposes of § 226.53 until July 1. In addition, unless the card issuer allocates amounts paid by the consumer in excess of the required minimum periodic payment in the manner requested by the consumer pursuant to § 226.53(b)(1)(ii), § 226.53(b)(1)(i) requires the card issuer to apply any excess payments first to the \$1,000 purchase balance except during the last two

billing cycles of the deferred interest period (when it must be applied first to any remaining portion of the \$2,000 balance). See example in comment 53–5.v.

5. \* \* \*  
v. \* \* \*

A. Each month from February through June, the consumer pays \$400 in excess of the required minimum periodic payment on the payment due date, which is the twenty-fifth of the month. Any interest that accrues on the purchases not subject to the deferred interest program is paid by the required minimum periodic payment. The card issuer does not accept requests from consumers regarding the allocation of excess payments pursuant to § 226.53(b)(1)(ii). Thus, § 226.53(b)(1)(i) requires the card issuer to allocate the \$400 excess payments received on February 25, March 25, and April 25 consistent with § 226.53(a). In other words, the card issuer must allocate those payments as follows: \$200 to pay off the balance not subject to the deferred interest program (which is subject to the 15% rate) and the remaining \$200 to the deferred interest balance (which is treated as a balance with a rate of zero). However, § 226.53(b)(1)(i) requires the card issuer to allocate the entire \$400 excess payment received on May 25 to the deferred interest balance. Similarly, § 226.53(b)(1)(i) requires the card issuer to allocate the \$400 excess payment received on June 25 as follows: \$200 to the deferred interest balance (which pays that balance in full) and the remaining \$200 to the balance not subject to the deferred interest program.

B. Same facts as above, except that the card issuer does accept requests from consumers regarding the allocation of excess payments pursuant to § 226.53(b)(1)(ii). In addition, on April 25, the card issuer receives an excess payment of \$800, which the consumer requests be allocated to pay off the \$800 balance subject to the deferred interest program. Section 226.53(b)(1)(ii) permits the card issuer to allocate the \$800 excess payment in the manner requested by the consumer.

#### 53(b) Special rules.

1. *Deferred interest and similar programs.* Section 226.53(b)(1) applies to deferred interest or similar programs under which the consumer is not obligated to pay interest that accrues on a balance if that balance is paid in full prior to the expiration of a specified period of time. For purposes of § 226.53(b)(1), “deferred interest” has the same meaning as in § 226.16(h)(2) and associated commentary. Section 226.53(b)(1) applies regardless of whether the consumer is required to make payments with respect to that balance during the specified period. However, a grace period during which any credit extended may be repaid without incurring a finance charge due to a periodic interest rate is not a deferred interest or similar program for purposes of § 226.53(b)(1). Similarly, a temporary annual percentage rate of zero percent that applies for a specified period of time consistent with § 226.55(b)(1) is not a deferred interest or similar program for purposes of § 226.53(b)(1) unless the consumer may be obligated to pay interest that accrues during the period if a balance is not paid in full prior to expiration of the period.

2. *Expiration of deferred interest or similar program during billing cycle.* For purposes of § 226.53(b)(1)(i), a billing cycle does not constitute one of the two billing cycles immediately preceding expiration of a deferred interest or similar program if the expiration date for the program precedes the payment due date in that billing cycle. For example, assume that a credit card account has a balance subject to a deferred interest program that expires on June 15. Assume also that the billing cycles for the account begin on the first day of the month and end on the last day of the month and that the required minimum periodic payment is due on the twenty-fifth day of the month. The card issuer does not accept requests from consumers regarding the allocation of excess payments pursuant to § 226.53(b)(1)(ii). Because the expiration date for the deferred interest program (June 15) precedes the due date in the June billing cycle (June 25), § 226.53(b)(1)(i) requires the card issuer to allocate first to the deferred interest balance any amount paid by the consumer in excess of the required minimum periodic payment during the April and May billing cycles (as well as any amount paid by the consumer before June 15). However, if the deferred interest program expired on June 25 or on June 30 (or on any day in between), § 226.53(b)(1)(i) would apply only to the May and June billing cycles.

3. *Consumer requests.* i. *Generally.* Section 226.53(b) does not require a card issuer to allocate amounts paid by the consumer in excess of the required minimum periodic payment in the manner requested by the consumer, provided that the card issuer instead allocates such amounts consistent with § 226.53(a) or (b)(1)(i), as applicable. For example, a card issuer may decline consumer requests regarding payment allocation as a general matter or may decline such requests when a consumer does not comply with requirements set by the card issuer (such as submitting the request in writing or submitting the request prior to or contemporaneously with submission of the payment), provided that amounts paid by the consumer in excess of the required minimum periodic payment are allocated consistent with § 226.53(a) or (b)(1)(i), as applicable. Similarly, a card issuer that accepts requests pursuant to § 226.53(b)(1)(ii) or (b)(2) must allocate amounts paid by a consumer in excess of the required minimum periodic payment consistent with § 226.53(a) or (b)(1)(i), as applicable, if the consumer does not submit a request. Furthermore, a card issuer that accepts requests pursuant to § 226.53(b)(1)(ii) or (b)(2) must allocate consistent with § 226.53(a) or (b)(1)(i), as applicable, if the consumer submits a request with which the card issuer cannot comply (such as a request that contains a mathematical error), unless the consumer submits an additional request with which the card issuer can comply.

ii. *Examples of consumer requests that satisfy § 226.53(b)(1)(ii) or (b)(2).* A consumer has made a request for purposes of § 226.53(b)(1)(ii) or (b)(2) if:

A. The consumer contacts the card issuer orally, electronically, or in writing and specifically requests that a payment or

payments be allocated in a particular manner during the period of time that the deferred interest or similar program applies to a balance on the account or the period of time that a balance on the account is secured.

B. The consumer completes and submits to the card issuer a form or payment coupon provided by the card issuer for the purpose of requesting that a payment or payments be allocated in a particular manner during the period of time that the deferred interest or similar program applies to a balance on the account or the period of time that a balance on the account is secured.

C. The consumer contacts the card issuer orally, electronically, or in writing and specifically requests that a payment that the card issuer has previously allocated consistent with § 226.53(a) or (b)(1)(i), as applicable, instead be allocated in a different manner.

iii. *Examples of consumer requests that do not satisfy § 226.53(b)(1)(ii) or (b)(2).* A consumer has not made a request for purposes of § 226.53(b)(1)(ii) or (b)(2) if:

A. The terms and conditions of the account agreement contain preprinted language stating that by applying to open an account, by using that account for transactions subject to a deferred interest or similar program, or by using the account to purchase property in which the card issuer holds a security interest the consumer requests that payments be allocated in a particular manner.

B. The card issuer’s on-line application contains a preselected check box indicating that the consumer requests that payments be allocated in a particular manner and the consumer does not deselect the box.

C. The payment coupon provided by the card issuer contains preprinted language or a preselected check box stating that by submitting a payment the consumer requests that the payment be allocated in a particular manner.

D. The card issuer requires a consumer to accept a particular payment allocation method as a condition of using a deferred interest or similar program, purchasing property in which the card issuer holds a security interest, making a payment, or receiving account services or features.

\* \* \* \* \*

#### § 226.55—Limitations on Increasing Annual Percentage Rates, Fees, and Charges

##### 55(a) General rule.

1. *Increase in rate, fee, or charge.* Section 226.55(a) prohibits card issuers from increasing an annual percentage rate or any fee or charge required to be disclosed under § 226.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii) on a credit card account unless specifically permitted by one of the exceptions in § 226.55(b). Except as specifically provided in § 226.55(b), this prohibition applies even if the circumstances under which an increase will occur are disclosed in advance. The following examples illustrate the general application of § 226.55(a) and (b). Additional examples illustrating specific aspects of the exceptions in § 226.55(b) are provided in the commentary to those exceptions.

i. *Account-opening disclosure of non-variable rate for six months, then variable rate.* Assume that, at account opening on

January 1 of year one, a card issuer discloses that the annual percentage rate for purchases is a non-variable rate of 15% and will apply for six months. The card issuer also discloses that, after six months, the annual percentage rate for purchases will be a variable rate that is currently 18% and will be adjusted quarterly by adding a margin of 8 percentage points to a publicly-available index not under the card issuer's control. Furthermore, the card issuer discloses that the annual percentage rate for cash advances is the same variable rate that will apply to purchases after six months. Finally, the card issuer discloses that, to the extent consistent with § 226.55 and other applicable law, a non-variable penalty rate of 30% may apply if the consumer makes a late payment. The payment due date for the account is the twenty-fifth day of the month and the required minimum periodic payments are applied to accrued interest and fees but do not reduce the purchase and cash advance balances.

A. *Change-in-terms rate increase for new transactions after first year.* On January 15 of year one, the consumer uses the account to make a \$2,000 purchase and a \$500 cash advance. No other transactions are made on the account. At the start of each quarter, the card issuer may adjust the variable rate that applies to the \$500 cash advance consistent with changes in the index (pursuant to § 226.55(b)(2)). All required minimum periodic payments are received on or before the payment due date until May of year one, when the payment due on May 25 is received by the creditor on May 28. At this time, the card issuer is prohibited by § 226.55 from increasing the rates that apply to the \$2,000 purchase, the \$500 cash advance, or future purchases and cash advances. Six months after account opening (July 1), the card issuer may begin to accrue interest on the \$2,000 purchase at the previously-disclosed variable rate determined using an 8-point margin (pursuant to § 226.55(b)(1)). Because no other increases in rate were disclosed at account opening, the card issuer may not subsequently increase the variable rate that applies to the \$2,000 purchase and the \$500 cash advance (except due to increases in the index pursuant to § 226.55(b)(2)). On November 16, the card issuer provides a notice pursuant to § 226.9(c) informing the consumer of a new variable rate that will apply on January 1 of year two (calculated using the same index and an increased margin of 12 percentage points). On December 15, the consumer makes a \$100 purchase. On January 1 of year two, the card issuer may increase the margin used to determine the variable rate that applies to new purchases to 12 percentage points (pursuant to § 226.55(b)(3)). However, § 226.55(b)(3)(ii) does not permit the card issuer to apply the variable rate determined using the 12-point margin to the \$2,000 purchase balance. Furthermore, although the \$100 purchase occurred more than 14 days after provision of the § 226.9(c) notice, § 226.55(b)(3)(iii) does not permit the card issuer to apply the variable rate determined using the 12-point margin to that purchase because it occurred during the first year after account opening. On January 15 of year two,

the consumer makes a \$300 purchase. The card issuer may apply the variable rate determined using the 12-point margin to the \$300 purchase.

B. *Account becomes more than 60 days delinquent during first year.* Same facts as above except that the required minimum periodic payment due on May 25 of year one is not received by the card issuer until July 30 of year one. Because the card issuer received the required minimum periodic payment more than 60 days after the payment due date, § 226.55(b)(4) permits the card issuer to increase the annual percentage rate applicable to the \$2,000 purchase, the \$500 cash advance, and future purchases and cash advances. However, § 226.55(b)(4)(i) requires the card issuer to first comply with the notice requirements in § 226.9(g). Thus, if the card issuer provided a § 226.9(g) notice on July 25 stating that all rates on the account would be increased to the 30% penalty rate, the card issuer could apply that rate beginning on September 8 to all balances and to future transactions.

ii. *Account-opening disclosure of non-variable rate for six months, then increased non-variable rate for six months, then variable rate; change-in-terms rate increase for new transactions after first year.* Assume that, at account opening on January 1 of year one, a card issuer discloses that the annual percentage rate for purchases will increase as follows: A non-variable rate of 5% for six months; a non-variable rate of 10% for an additional six months; and thereafter a variable rate that is currently 15% and will be adjusted monthly by adding a margin of 5 percentage points to a publicly-available index not under the card issuer's control. The payment due date for the account is the fifteenth day of the month and the required minimum periodic payments are applied to accrued interest and fees but do not reduce the purchase balance. On January 15 of year one, the consumer uses the account to make a \$1,500 purchase. Six months after account opening (July 1), the card issuer may begin to accrue interest on the \$1,500 purchase at the previously-disclosed 10% non-variable rate (pursuant to § 226.55(b)(1)). On September 15, the consumer uses the account for a \$700 purchase. On November 16, the card issuer provides a notice pursuant to § 226.9(c) informing the consumer of a new variable rate that will apply on January 1 of year two (calculated using the same index and an increased margin of 8 percentage points). One year after account opening (January 1 of year two), the card issuer may begin accruing interest on the \$2,200 purchase balance at the previously-disclosed variable rate determined using a 5-point margin (pursuant to § 226.55(b)(1)). Section 226.55 does not permit the card issuer to apply the variable rate determined using the 8-point margin to the \$2,200 purchase balance. Furthermore, § 226.55 does not permit the card issuer to subsequently increase the variable rate determined using the 5-point margin that applies to the \$2,200 purchase balance (except due to increases in the index pursuant to § 226.55(b)(2)). The card issuer may, however, apply the variable rate determined using the 8-point margin to purchases made on or after January 1 of year two (pursuant to § 226.55(b)(3)).

iii. *Change-in-terms rate increase for new transactions after first year; penalty rate increase after first year.* Assume that, at account opening on January 1 of year one, a card issuer discloses that the annual percentage rate for purchases is a variable rate determined by adding a margin of 6 percentage points to a publicly-available index outside of the card issuer's control. The card issuer also discloses that, to the extent consistent with § 226.55 and other applicable law, a non-variable penalty rate of 28% may apply if the consumer makes a late payment. The due date for the account is the fifteenth of the month. On May 30 of year two, the account has a purchase balance of \$1,000. On May 31, the card issuer provides a notice pursuant to § 226.9(c) informing the consumer of a new variable rate that will apply on July 16 for all purchases made on or after June 15 (calculated by using the same index and an increased margin of 8 percentage points). On June 14, the consumer makes a \$500 purchase. On June 15, the consumer makes a \$200 purchase. On July 1, the card issuer has not received the payment due on June 15 and provides the consumer with a notice pursuant to § 226.9(g) stating that the 28% penalty rate will apply as of August 15 to all transactions made on or after July 16 and that, if the consumer becomes more than 60 days late, the penalty rate will apply to all balances on the account. On July 17, the consumer makes a \$300 purchase.

A. *Account does not become more than 60 days delinquent.* The payment due on June 15 of year two is received on July 2. On July 16, § 226.55(b)(3)(ii) permits the card issuer to apply the variable rate determined using the 8-point margin disclosed in the § 226.9(c) notice to the \$200 purchase made on June 15 but does not permit the card issuer to apply this rate to the \$1,500 purchase balance. On August 15, § 226.55(b)(3)(ii) permits the card issuer to apply the 28% penalty rate disclosed at account opening and in the § 226.9(g) notice to the \$300 purchase made on July 17 but does not permit the card issuer to apply this rate to the \$1,500 purchase balance (which remains at the variable rate determined using the 6-point margin) or the \$200 purchase (which remains at the variable rate determined using the 8-point margin).

B. *Account becomes more than 60 days delinquent after provision of § 226.9(g) notice.* Same facts as above except the payment due on June 15 of year two has not been received by August 15. Section 226.55(b)(4) permits the card issuer to apply the 28% penalty rate to the \$1,500 purchase balance and the \$200 purchase because it has not received the June 15 payment within 60 days after the due date. However, in order to do so, § 226.55(b)(4)(i) requires the card issuer to first provide an additional notice pursuant to § 226.9(g). This notice must be sent no earlier than August 15, which is the first day the account became more than 60 days' delinquent. If the notice is sent on August 15, the card issuer may begin accruing interest on the \$1,500 purchase balance and the \$200 purchase at the 28% penalty rate beginning on September 29.

2. *Relationship to grace period.* Nothing in § 226.55 prohibits a card issuer from assessing interest due to the loss of a grace

period to the extent consistent with § 226.5(b)(2)(ii)(B) and § 226.54. In addition, a card issuer has not reduced an annual percentage rate on a credit card account for purposes of § 226.55 if the card issuer does not charge interest on a balance or a portion thereof based on a payment received prior to the expiration of a grace period. For example, if the annual percentage rate for purchases on an account is 15% but the card issuer does not charge any interest on a \$500 purchase balance because that balance was paid in full prior to the expiration of the grace period, the card issuer has not reduced the 15% purchase rate to 0% for purposes of § 226.55.

#### 55(b) Exceptions.

1. *Exceptions not mutually exclusive.* A card issuer generally may increase an annual percentage rate or a fee or charge required to be disclosed under § 226.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii) pursuant to an exception set forth in § 226.55(b) even if that increase would not be permitted under a different exception. For example, although a card issuer cannot increase an annual percentage rate pursuant to § 226.55(b)(1) unless that rate is provided for a specified period of at least six months, the card issuer may increase an annual percentage rate during a specified period due to an increase in an index consistent with § 226.55(b)(2). Similarly, although § 226.55(b)(3) does not permit a card issuer to increase an annual percentage rate during the first year after account opening, the card issuer may increase the rate during the first year after account opening pursuant to § 226.55(b)(4) if the required minimum periodic payment is not received within 60 days after the due date. However, if § 226.55(b)(4)(ii) requires a card issuer to decrease the rate, fee, or charge that applies to a balance while the account is subject to a workout or temporary hardship arrangement or subject to 50 U.S.C. app. 527 or a similar Federal or State statute or regulation, the card issuer may not impose a higher rate, fee, or charge on that balance pursuant to § 226.55(b)(5) or (b)(6) upon completion or failure of the arrangement or once 50 U.S.C. app. 527 or the similar Federal or State statute or regulation no longer applies. For example, assume that, on January 1, the annual percentage rate that applies to a \$1,000 balance is increased from 12% to 30% pursuant to § 226.55(b)(4). On February 1, the rate on that balance is decreased from 30% to 15% consistent with § 226.55(b)(5) as a part of a workout or temporary hardship arrangement. On July 1, § 226.55(b)(4)(ii) requires the card issuer to reduce the rate that applies to any remaining portion of the \$1,000 balance from 15% to 12%. If the consumer subsequently completes or fails to comply with the terms of the workout or temporary hardship arrangement, the card issuer may not increase the 12% rate that applies to any remaining portion of the \$1,000 balance pursuant to § 226.55(b)(5).

\* \* \* \* \*

3. *Application of a lower rate, fee, or charge.* Nothing in § 226.55 prohibits a card issuer from lowering an annual percentage rate or a fee or charge required to be disclosed under § 226.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii). However, a card issuer that does

so cannot subsequently increase the rate, fee, or charge unless permitted by one of the exceptions in § 226.55(b). The following examples illustrate the application of the rule:

i. *Application of lower rate during first year.* Assume that a card issuer discloses at account opening on January 1 of year one that a non-variable annual percentage rate of 15% will apply to purchases. The card issuer also discloses that, to the extent consistent with § 226.55 and other applicable law, a non-variable penalty rate of 30% may apply if the consumer's required minimum periodic payment is received after the payment due date, which is the tenth of the month. The required minimum periodic payments are applied to accrued interest and fees but do not reduce the purchase balance.

A. *Temporary rate returns to standard rate at expiration.* On September 30 of year one, the account has a purchase balance of \$1,400 at the 15% rate. On October 1, the card issuer provides a notice pursuant to § 226.9(c) informing the consumer that the rate for new purchases will decrease to a non-variable rate of 5% for six months (from October 1 through March 31 of year two) and that, beginning on April 1 of year two, the rate for purchases will increase to the 15% non-variable rate disclosed at account opening. The card issuer does not apply the 5% rate to the \$1,400 purchase balance. On October 14 of year one, the consumer makes a \$300 purchase at the 5% rate. On January 15 of year two, the consumer makes a \$150 purchase at the 5% rate. On April 1 of year two, the card issuer may begin accruing interest on the \$300 purchase and the \$150 purchase at 15% as disclosed in the § 226.9(c) notice (pursuant to § 226.55(b)(1)).

B. *Penalty rate increase.* Same facts as above except that the required minimum periodic payment due on November 10 of year one is not received until November 15. Section 226.55 does not permit the card issuer to increase any annual percentage rate on the account at this time. The card issuer may apply the 30% penalty rate to new transactions beginning on April 1 of year two pursuant to § 226.55(b)(3) by providing a § 226.9(g) notice informing the consumer of this increase no later than February 14 of year two. The card issuer may not, however, apply the 30% penalty rate to the \$1,400 purchase balance as of September 30 of year one, the \$300 purchase on October 15 of year one, or the \$150 purchase on January 15 of year two.

ii. *Application of lower rate at end of first year.* Assume that, at account opening on January 1 of year one, a card issuer discloses that a non-variable annual percentage rate of 15% will apply to purchases for one year and discloses that, after the first year, the card issuer will apply a variable rate that is currently 20% and is determined by adding a margin of 10 percentage points to a publicly-available index not under the card issuer's control. On December 31 of year one, the account has a purchase balance of \$3,000.

A. *Notice of extension of existing temporary rate provided consistent with § 226.55(b)(1)(i).* On December 15 of year one, the card issuer provides a notice pursuant to § 226.9(c) informing the consumer that the

existing 15% rate will continue to apply until July 1 of year two. The notice further states that, on July 1 of year two, the variable rate disclosed at account opening will apply. On July 1 of year two, § 226.55(b)(1) permits the card issuer to apply that variable rate to any remaining portion of the \$3,000 balance and to new transactions.

B. *Notice of new temporary rate provided consistent with § 226.55(b)(1)(i).* On December 15 of year one, the card issuer provides a notice pursuant to § 226.9(c) informing the consumer of a new variable rate that will apply on January 1 of year two that is lower than the variable rate disclosed at account opening. The new variable rate is calculated using the same index and a reduced margin of 8 percentage points. The notice further states that, on July 1 of year two, the margin will increase to the margin disclosed at account opening (10 percentage points). On July 1 of year two, § 226.55(b)(1) permits the card issuer to increase the margin used to determine the variable rate that applies to new purchases to 10 percentage points and to apply that rate to any remaining portion of the \$3,000 purchase balance.

C. *No notice provided.* Same facts as in paragraph ii.B. above except that the card issuer does not send a notice on December 15 of year one. Instead, on January 1 of year two, the card issuer lowers the margin used to determine the variable rate to 8 percentage points and applies that rate to the \$3,000 purchase balance and to new purchases. Section 226.9 does not require advance notice in these circumstances. However, unless the account becomes more than 60 days' delinquent, § 226.55 does not permit the card issuer to subsequently increase the rate that applies to the \$3,000 purchase balance except due to increases in the index (pursuant to § 226.55(b)(2)).

iii. *Application of lower rate after first year.* Assume that a card issuer discloses at account opening on January 1 of year one that a non-variable annual percentage rate of 10% will apply to purchases for one year, after which that rate will increase to a non-variable rate of 15%. The card issuer also discloses that, to the extent consistent with § 226.55 and other applicable law, a non-variable penalty rate of 30% may apply if the consumer's required minimum periodic payment is received after the payment due date, which is the tenth of the month. The required minimum periodic payments are applied to accrued interest and fees but do not reduce the purchase balance.

A. *Effect of 14-day period.* On June 30 of year two, the account has a purchase balance of \$1,000 at the 15% rate. On July 1, the card issuer provides a notice pursuant to § 226.9(c) informing the consumer that the rate for new purchases will decrease to a non-variable rate of 5% for six months (from July 1 through December 31 of year two) and that, beginning on January 1 of year three, the rate for purchases will increase to a non-variable rate of 17%. On July 15 of year two, the consumer makes a \$200 purchase. On July 16, the consumer makes a \$100 purchase. On January 1 of year three, the card issuer may begin accruing interest on the \$100 purchase at 17% (pursuant to

§ 226.55(b)(1). However, § 226.55(b)(1)(ii)(B) does not permit the card issuer to apply the 17% rate to the \$200 purchase because that transaction occurred within 14 days after provision of the § 226.9(c) notice. Instead, the card issuer may apply the 15% rate that applied to purchases prior to provision of the § 226.9(c) notice. In addition, if the card issuer applied the 5% rate to the \$1,000 purchase balance, § 226.55(b)(ii)(A) would not permit the card issuer to increase the rate that applies to that balance on January 1 of year three to a rate that is higher than 15% that previously applied to the balance.

B. *Penalty rate increase.* Same facts as above except that the required minimum periodic payment due on August 25 is received on August 30. At this time, § 226.55 does not permit the card issuer to increase the annual percentage rates that apply to the \$1,000 purchase balance, the \$200 purchase, or the \$100 purchase. Instead, those rates can only be increased as discussed in paragraph iii.A. above. However, if the card issuer provides a notice pursuant to § 226.9(c) or (g) on September 1, § 226.55(b)(3) permits the card issuer to apply an increased rate (such as the 17% purchase rate or the 30% penalty rate) to transactions that occur on or after September 16 beginning on October 16.

C. *Application of lower temporary rate during specified period.* Same facts as in paragraph iii. above. On June 30 of year two, the account has a purchase balance of \$1,000 at the 15% non-variable rate. On July 1, the card issuer provides a notice pursuant to § 226.9(c) informing the consumer that the rate for the \$1,000 balance and new purchases will decrease to a non-variable rate of 12% for six months (from July 1 through December 31 of year two) and that, beginning on January 1 of year three, the rate for purchases will increase to a variable rate that is currently 20% and is determined by adding a margin of 10 percentage points to a publicly-available index not under the card issuer's control. On August 15 of year two, the consumer makes a \$500 purchase. On October 1, the card issuer provides another notice pursuant to § 226.9(c) informing the consumer that the rate for the \$1,000 balance, the \$500 purchase, and new purchases will decrease to a non-variable rate of 5% for six months (from October 1 of year two through March 31 of year three) and that, beginning on April 1 of year three, the rate for purchases will increase to a variable rate that is currently 23% and is determined by adding a margin of 13 percentage points to the previously-disclosed index. On November 15 of year two, the consumer makes a \$300 purchase. On April 1 of year three, § 226.55 permits the card issuer to begin accruing interest using the following rates for any remaining portion of the following balances: The 15% non-variable rate for the \$1,000 balance; the variable rate determined using the 10-point margin for the \$500 purchase; and the variable rate determined using the 13-point margin for the \$300 purchase.

\* \* \* \* \*

55(b)(1) *Temporary rate, fee, or charge exception.*

1. *Relationship to § 226.9(c)(2)(v)(B).* A card issuer that has complied with the

disclosure requirements in § 226.9(c)(2)(v)(B) has also complied with the disclosure requirements in § 226.55(b)(1)(i).

2. *Period of six months or longer.* A temporary annual percentage rate, fee, or charge must apply for a specified period of six months or longer before a card issuer can increase that rate, fee, or charge pursuant to § 226.55(b)(1). The specified period must expire no less than six months after the date on which the card issuer provides the consumer with the disclosures required by § 226.55(b)(1)(i) or, if later, the date on which the account can be used for transactions to which the temporary rate, fee, or charge applies. Section 226.55(b)(1) does not prohibit a card issuer from limiting the application of a temporary annual percentage rate, fee, or charge to a particular category of transactions (such as to balance transfers or to purchases over \$100). However, in circumstances where the card issuer limits application of the temporary rate, fee, or charge to a single transaction, the specified period must expire no less than six months after the date on which that transaction occurred. The following examples illustrate the application of § 226.55(b)(1):

i. Assume that on January 1 a card issuer offers a consumer a 5% annual percentage rate on purchases made during the months of January through June. A 15% rate will apply thereafter. On February 15, a \$500 purchase is charged to the account. On June 15, a \$200 purchase is charged to the account. On July 1, the card issuer may begin accruing interest at the 15% rate on the \$500 purchase and the \$200 purchase (pursuant to § 226.55(b)(1)).

ii. Same facts as above except that on January 1 the card issuer offered the 5% rate on purchases beginning in the month of February. Section 226.55(b)(1) would not permit the card issuer to begin accruing interest at the 15% rate on the \$500 purchase and the \$200 purchase until August 1.

iii. Assume that on October 31 of year one the annual percentage rate for purchases is 17%. On November 1, the card issuer offers the consumer a 0% rate for six months on purchases made during the months of November and December. The 17% rate will apply thereafter. On November 15, a \$500 purchase is charged to the account. On December 15, a \$300 purchase is charged to the account. On January 15 of year two, a \$150 purchase is charged to the account. Section 226.55(b)(1) would not permit the card issuer to begin accruing interest at the 17% rate on the \$500 purchase and the \$300 purchase until May 1 of year two. However, the card issuer may accrue interest at the 17% rate on the \$150 purchase beginning on January 15 of year two.

iv. Assume that on June 1 of year one a card issuer offers a consumer a 0% annual percentage rate for six months on the purchase of an appliance. An 18% rate will apply thereafter. On September 1, a \$5,000 transaction is charged to the account for the purchase of an appliance. Section 226.55(b)(1) would not permit the card issuer to begin accruing interest at the 18% rate on the \$5,000 transaction until March 1 of year two.

v. Assume that on May 31 of year one the annual percentage rate for purchases is 15%.

On June 1, the card issuer offers the consumer a 5% rate for six months on a balance transfer of at least \$1,000. The 15% rate will apply thereafter. On June 15, a \$3,000 balance is transferred to the account. On July 15, a \$200 purchase is charged to the account. Section 226.55(b)(1) would not permit the card issuer to begin accruing interest at the 15% rate on the \$3,000 transferred balance until December 15. However, the card issuer may accrue interest at the 15% rate on the \$200 purchase beginning on July 15.

vi. Same facts as in paragraph v. above except that the card issuer offers the 5% rate for six months on all balance transfers of at least \$1,000 during the month of June and a \$2,000 balance is transferred to the account on June 30 (in addition to the \$3,000 balance transfer on June 15). Because the 5% rate is not limited to a particular transaction, § 226.55(b)(1) permits the card issuer to begin accruing interest on the \$3,000 and \$2,000 transferred balances on December 1.

vii. Assume that a card issuer discloses at account opening on January 1 of year one that the annual fee for the account is \$0 until January 1 of year two, when the fee will increase to \$50. On January 1 of year two, the card issuer may impose the \$50 annual fee. However, the issuer must also comply with the notice requirements in § 226.9(e).

viii. Assume that a card issuer discloses at account opening on January 1 of year one that the monthly maintenance fee for the account is \$0 until July 1 of year one, when the fee will increase to \$10. Beginning on July 1 of year one, the card issuer may impose the \$10 monthly maintenance fee (to the extent consistent with § 226.52(a)).

3. *Deferred interest and similar promotional programs.* i. *Application of § 226.55.* The general prohibition in § 226.55(a) applies to the imposition of accrued interest upon the expiration of a deferred interest or similar promotional program under which the consumer is not obligated to pay interest that accrues on a balance if that balance is paid in full prior to the expiration of a specified period of time. However, the exception in § 226.55(b)(1) also applies to these programs, provided that the specified period is six months or longer and that, prior to the commencement of the period, the card issuer discloses the length of the period and the rate at which interest will accrue on the balance subject to the deferred interest or similar program if that balance is not paid in full prior to expiration of the period. See comment 9(c)(2)(v)–9. For purposes of § 226.55, “deferred interest” has the same meaning as in § 226.16(h)(2) and associated commentary.

ii. *Examples.*

A. *Deferred interest offer at account opening.* Assume that, at account opening on January 1 of year one, the card issuer discloses the following with respect to a deferred interest program: “No interest on purchases made in January of year one if paid in full by December 31 of year one. If the balance is not paid in full by that date, interest will be imposed from the transaction date at a rate of 20%.” On January 15 of year one, the consumer makes a purchase of

\$2,000. No other transactions are made on the account. The terms of the deferred interest program require the consumer to make minimum periodic payments with respect to the deferred interest balance, and the payment due on April 1 is not received until April 10. Section 226.55 does not permit the card issuer to charge to the account interest that has accrued on the \$2,000 purchase at this time. Furthermore, if the consumer pays the \$2,000 purchase in full on or before December 31 of year one, § 226.55 does not permit the card issuer to charge to the account any interest that has accrued on that purchase. If, however, the \$2,000 purchase has not been paid in full by January 1 of year two, § 226.55(b)(1) permits the card issuer to charge to the account the interest accrued on that purchase at the 20% rate during year one (to the extent consistent with other applicable law).

*B. Deferred interest offer after account opening.* Assume that a card issuer discloses at account opening on January 1 of year one that the rate that applies to purchases is a variable annual percentage rate that is currently 18% and will be adjusted quarterly by adding a margin of 8 percentage points to a publicly-available index not under the card issuer's control. The card issuer also discloses that, to the extent consistent with § 226.55 and other applicable law, a non-variable penalty rate of 30% may apply if the consumer's required minimum periodic payment is received after the payment due date, which is the first of the month. On June 30 of year two, the consumer uses the account for a \$1,000 purchase in response to an offer of a deferred interest program. Under the terms of this program, interest on the purchase will accrue at the variable rate for purchases but the consumer will not be obligated to pay that interest if the purchase is paid in full by December 31 of year three. The terms of the deferred interest program require the consumer to make minimum periodic payments with respect to the deferred interest balance, and the payment due on September 1 of year two is not received until September 6. Section 226.55 does not permit the card issuer to charge to the account interest that has accrued on the \$1,000 purchase at this time. Furthermore, if the consumer pays the \$1,000 purchase in full on or before December 31 of year three, § 226.55 does not permit the card issuer to charge to the account any interest that has accrued on that purchase. On December 31 of year three, the \$1,000 purchase has been paid in full. Under these circumstances, the card issuer may not charge any interest accrued on the \$1,000 purchase.

*C. Application of § 226.55(b)(4) to deferred interest programs.* Same facts as in paragraph ii.B. above except that, on November 2 of year two, the card issuer has not received the required minimum periodic payments due on September 1, October 1, or November 1 of year two and sends a § 226.9(c) or (g) notice stating that interest accrued on the \$1,000 purchase since June 30 of year two will be charged to the account on December 17 of year two and thereafter interest will be charged on the \$1,000 purchase consistent with the variable rate for purchases. On December 17 of year two, § 226.55(b)(4)

permits the card issuer to charge to the account interest accrued on the \$1,000 purchase since June 30 of year two and § 226.55(b)(3) permits the card issuer to begin charging interest on the \$1,000 purchase consistent with the variable rate for purchases. However, if the card issuer receives the required minimum periodic payments due on January 1, February 1, March 1, April 1, May 1, and June 1 of year three, § 226.55(b)(4)(i) requires the card issuer to cease charging the account for interest on the \$1,000 purchase no later than the first day of the next billing cycle. See comment 55(b)(4)-3.iii. However, § 226.55(b)(4)(ii) does not require the card issuer to waive or credit the account for interest accrued on the \$1,000 purchase since June 30 of year two. If the \$1,000 purchase is paid in full on December 31 of year three, the card issuer is not permitted to charge to the account interest accrued on the \$1,000 purchase after June 1 of year three.

*4. Contingent or discretionary increases.* Section 226.55(b)(1) permits a card issuer to increase a temporary annual percentage rate, fee, or charge upon the expiration of a specified period of time. However, § 226.55(b)(1) does not permit a card issuer to apply an increased rate, fee, or charge that is contingent on a particular event or occurrence or that may be applied at the card issuer's discretion. The following examples illustrate rate increases that are not permitted by § 226.55:

i. Assume that a card issuer discloses at account opening on January 1 of year one that a non-variable annual percentage rate of 15% applies to purchases but that all rates on an account may be increased to a non-variable penalty rate of 30% if a consumer's required minimum periodic payment is received after the payment due date, which is the fifteenth of the month. On March 1, the account has a \$2,000 purchase balance. The payment due on March 15 is not received until March 20. Section 226.55 does not permit the card issuer to apply the 30% penalty rate to the \$2,000 purchase balance. However, pursuant to § 226.55(b)(3), the card issuer could provide a § 226.9(c) or (g) notice on or before November 16 informing the consumer that, on January 1 of year two, the 30% rate (or a different rate) will apply to new transactions.

ii. Assume that a card issuer discloses at account opening on January 1 of year one that a non-variable annual percentage rate of 5% applies to transferred balances but that this rate will increase to a non-variable rate of 18% if the consumer does not use the account for at least \$200 in purchases each billing cycle. On July 1, the consumer transfers a balance of \$4,000 to the account. During the October billing cycle, the consumer uses the account for \$150 in purchases. Section 226.55 does not permit the card issuer to apply the 18% rate to the \$4,000 transferred balance or the \$150 in purchases. However, pursuant to § 226.55(b)(3), the card issuer could provide a § 226.9(c) or (g) notice on or before November 16 informing the consumer that, on January 1 of year two, the 18% rate (or a different rate) will apply to new transactions.

iii. Assume that a card issuer discloses at account opening on January 1 of year one that the annual fee for the account is \$10 but may be increased to \$50 if a consumer's required minimum periodic payment is received after the payment due date, which is the fifteenth of the month. The payment due on July 15 is not received until July 23. Section 226.55 does not permit the card issuer to impose the \$50 annual fee at this time. Furthermore, § 226.55(b)(3) does not permit the card issuer to increase the \$10 annual fee during the first year after account opening. However, § 226.55(b)(3) does permit the card issuer to impose the \$50 fee (or a different fee) on January 1 of year two if, on or before November 16 of year one, the issuer informs the consumer of the increased fee consistent with § 226.9(c) and the consumer does not reject that increase pursuant to § 226.9(h).

iv. Assume that a card issuer discloses at account opening on January 1 of year one that the annual fee for a credit card account under an open-end (not home-secured) consumer credit plan is \$0 but may be increased to \$100 if the consumer's balance in a deposit account provided by the card issuer or its affiliate or subsidiary falls below \$5,000. On June 1 of year one, the balance on the deposit account is \$4,500. Section 226.55 does not permit the card issuer to impose the \$100 annual fee at this time. Furthermore, § 226.55(b)(3) does not permit the card issuer to increase the \$0 annual fee during the first year after account opening. However, § 226.55(b)(3) does permit the card issuer to impose the \$100 fee (or a different fee) on January 1 of year two if, on or before November 16 of year one, the issuer informs the consumer of the increased fee consistent with § 226.9(c) and the consumer does not reject that increase pursuant to § 226.9(h).

*5. Application of increased fees and charges.* Section 226.55(b)(1)(ii) limits the ability of a card issuer to apply an increased fee or charge to certain transactions. However, to the extent consistent with § 226.55(b)(3), (c), and (d), a card issuer generally is not prohibited from increasing a fee or charge that applies to the account as a whole. See comments 55(c)(1)-3 and 55(d)-1.

\* \* \* \* \*  
55(b)(3) Advance notice exception.  
\* \* \* \* \*

*6. Delayed implementation of increase.* Section 226.55(b)(3)(iii) does not prohibit a card issuer from notifying a consumer of an increase in an annual percentage rate, fee, or charge consistent with § 226.9(b), (c), or (g). However, § 226.55(b)(3)(iii) does prohibit application of an increased rate, fee, or charge during the first year after the account is opened, while the account is closed, or while the card issuer does not permit the consumer to use the account for new transactions. If § 226.9(b), (c), or (g) permits a card issuer to apply an increased rate, fee, or charge on a particular date and the account is closed on that date or the card issuer does not permit the consumer to use the account for new transactions on that date, the card issuer may delay application of the increased rate, fee, or charge until the first day of the following billing cycle without

relinquishing the ability to apply that rate, fee, or charge (assuming the increase is otherwise consistent with § 226.55). See examples in comment 55(b)–2.iii. However, if the account is closed or the card issuer does not permit the consumer to use the account for new transactions on the first day of the following billing cycle, then the card issuer must provide a new notice of the increased rate, fee, or charge consistent with § 226.9(b), (c), or (g).

7. *Date on which account may first be used by consumer to engage in transactions.* For purposes of § 226.55(b)(3)(iii), an account is considered open no earlier than the date on which the account may first be used by the consumer to engage in transactions. An account is considered open for purposes of § 226.55(b)(3)(iii) on any date that the card issuer may consider the account open for purposes of § 226.52(a)(1). See comment 52(a)(1)–4.

\* \* \* \* \*

55(c) *Treatment of protected balances.*

55(c)(1) *Definition of protected balance.*

1. *Example of protected balance.* Assume that, on March 15 of year two, an account has a purchase balance of \$1,000 at a non-variable annual percentage rate of 12% and that, on March 16, the card issuer sends a notice pursuant to § 226.9(c) informing the consumer that the annual percentage rate for new purchases will increase to a non-variable rate of 15% on May 1. The fourteenth day after provision of the notice is March 29. On March 29, the consumer makes a \$100 purchase. On March 30, the consumer makes a \$150 purchase. On May 1, § 226.55(b)(3)(ii) permits the card issuer to begin accruing interest at 15% on the \$150 purchase made on March 30 but does not permit the card issuer to apply that 15% rate to the \$1,100 purchase balance as of March 29. Accordingly, the protected balance for purposes of § 226.55(c) is the \$1,100 purchase balance as of March 29. The \$150 purchase made on March 30 is not part of the protected balance.

2. *First year after account opening.* Section 226.55(c) applies to amounts owed for a category of transactions to which an increased annual percentage rate or an increased fee or charge cannot be applied after the rate, fee, or charge for that category of transactions has been increased pursuant to § 226.55(b)(3). Because § 226.55(b)(3)(iii) does not permit a card issuer to increase an annual percentage rate or a fee or charge required to be disclosed under § 226.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii) during the first year after account opening, § 226.55(c) does not apply to balances during the first year after account opening.

3. *Increased fees and charges.* Except as provided in § 226.55(b)(3)(iii), § 226.55(b)(3) permits a card issuer to increase a fee or charge required to be disclosed under § 226.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii) after complying with the applicable notice requirements in § 226.9(b) or (c), provided that the increased fee or charge is not applied to a protected balance. To the extent consistent with § 226.55(b)(3)(iii), a card issuer is not prohibited from increasing a fee or charge that applies to the account as a whole or to balances other than the protected

balance. For example, after the first year following account opening, a card issuer generally may add or increase an annual or a monthly maintenance fee for an account after complying with the notice requirements in § 226.9(c), including notifying the consumer of the right to reject the new or increased fee under § 226.9(h). However, except as otherwise provided in § 226.55(b), an increased fee or charge cannot be applied to an account while the account is closed or while the card issuer does not permit the consumer to use the account for new transactions. See § 226.55(b)(3)(iii); see also §§ 226.52(b)(2)(i)(B)(3) and 226.55(d)(1). Furthermore, if the consumer rejects an increase in a fee or charge pursuant to § 226.9(h), the card issuer is prohibited from applying the increased fee or charge to the account and from imposing any other fee or charge solely as a result of the rejection. See § 226.9(h)(2)(i) and (ii); comment 9(h)(2)(ii)–2.

4. *Changing balance computation method.*

Nothing in § 226.55 prohibits a card issuer from changing the balance computation method that applies to new transactions as well as protected balances.

\* \* \* \* \*

55(e) *Promotional waivers or rebates of interest, fees, and other charges.*

1. *Generally.* Nothing in § 226.55 prohibits a card issuer from waiving or rebating finance charges due to a periodic interest rate or a fee or charge required to be disclosed under § 226.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii). However, if a card issuer promotes and applies the waiver or rebate to an account, the card issuer cannot temporarily or permanently cease or terminate any portion of the waiver or rebate on that account unless permitted by one of the exceptions in § 226.55(b). For example:

i. A card issuer applies an annual percentage rate of 15% to balance transfers but promotes a program under which all of the interest accrued on transferred balances will be waived or rebated for one year. If, prior to the commencement of the one-year period, the card issuer discloses the length of the period and the annual percentage rate that will apply to transferred balances after expiration of that period consistent with § 226.55(b)(1)(i), § 226.55(b)(1) permits the card issuer to begin imposing interest charges on transferred balances after one year. Furthermore, if, during the one-year period, a required minimum periodic payment is not received within 60 days of the payment due date, § 226.55(b)(4) permits the card issuer to begin imposing interest charges on transferred balances (after providing a notice consistent with § 226.9(g) and § 226.55(b)(4)(i)). However, if a required minimum periodic payment is not more than 60 days delinquent or if the consumer otherwise violates the terms or other requirements of the account, § 226.55 does not permit the card issuer to begin imposing interest charges on transferred balances until the expiration of the one-year period.

ii. A card issuer imposes a monthly maintenance fee of \$10 but promotes a program under which the fee will be waived or rebated for the six months following account opening. If, prior to account opening,

the card issuer discloses the length of the period and the monthly maintenance fee that will be imposed after expiration of that period consistent with § 226.55(b)(1)(i), § 226.55(b)(1) permits the card issuer to begin imposing the monthly maintenance fee six months after account opening. Furthermore, if, during the six-month period, a required minimum periodic payment is not received within 60 days of the payment due date, § 226.55(b)(4) permits the card issuer to begin imposing the monthly maintenance fee (after providing a notice consistent with § 226.9(c) and § 226.55(b)(4)(i)). However, if a required minimum periodic payment is not more than 60 days delinquent or if the consumer otherwise violates the terms or other requirements of the account, § 226.55 does not permit the card issuer to begin imposing the monthly maintenance fee until the expiration of the six-month period.

2. *Promotion of waiver or rebate.* For purposes of § 226.55(e), a card issuer generally promotes a waiver or rebate if the card issuer discloses the waiver or rebate in an advertisement (as defined in § 226.2(a)(2)). See comment 2(a)(2)–1. In addition, a card issuer generally promotes a waiver or rebate for purposes of § 226.55(e) if the card issuer discloses the waiver or rebate in communications regarding existing accounts (such as communications regarding a promotion that encourages additional or different uses of an existing account). However, a card issuer does not promote a waiver or rebate for purposes of § 226.55(e) if the advertisement or communication relates to an inquiry or dispute about a specific charge or to interest, fees, or charges that have already been waived or rebated.

i. *Examples of promotional communications.* The following are examples of circumstances in which a card issuer is promoting a waiver or rebate for purposes of § 226.55(e):

A. A card issuer discloses the waiver or rebate in a newspaper, magazine, leaflet, promotional flyer, catalog, sign, or point-of-sale display, unless the disclosure relates to interest, fees, or charges that have already been waived.

B. A card issuer discloses the waiver or rebate on radio or television or through electronic advertisements (such as on the Internet), unless the disclosure relates to interest, fees, or charges that have already been waived or rebated.

C. A card issuer discloses a waiver or rebate to individual consumers, such as by telephone, letter, or electronic communication, through direct mail literature, or on or with account statements, unless the disclosure relates to an inquiry or dispute about a specific charge or to interest, fees, or charges that have already been waived or rebated.

ii. *Examples of non-promotional communications.* The following are examples of circumstances in which a card issuer is not promoting a waiver or rebate for purposes of § 226.55(e):

A. After a card issuer has waived or rebated interest, fees, or other charges subject to § 226.55 with respect to an account, the issuer discloses the waiver or rebate to the account holder on the periodic statement or



by telephone, letter, or electronic communication. However, if the card issuer also discloses prospective waivers or rebates in the same communication, the issuer is promoting a waiver or rebate for purposes of § 226.55(e).

B. A card issuer communicates with a consumer about a waiver or rebate of interest, fees, or other charges subject to § 226.55 in relation to an inquiry or dispute about a specific charge, including a dispute under §§ 226.12 or 226.13.

C. A card issuer waives or rebates interest, fees, or other charges subject to § 226.55 in order to comply with a legal requirement (such as the limitations in § 226.52(a)).

D. A card issuer discloses a grace period, as defined in § 226.5(b)(2)(ii)(3).

E. A card issuer provides a period after the payment due date during which interest, fees, or other charges subject to § 226.55 are waived or rebated even if a payment has not been received.

F. A card issuer provides benefits (such as rewards points or cash back on purchases or finance charges) that can be applied to the account as credits, provided that the benefits are not promoted as reducing interest, fees, or other charges subject to § 226.55.

3. *Relationship of § 226.55(e) to grace period.* Section 226.55(e) does not apply to the waiver of finance charges due to a periodic rate consistent with a grace period, as defined in § 226.5(b)(2)(ii)(3).

\* \* \* \* \*

#### § 226.58—Internet Posting of Credit Card Agreements

##### 58(b) Definitions.

##### 58(b)(1) Agreement.

1. *Inclusion of pricing information.* For purposes of this section, a credit card agreement is deemed to include certain information, such as annual percentage rates and fees, even if the issuer does not otherwise include this information in the basic credit contract. This information is listed under the defined term “pricing information” in § 226.58(b)(7). For example, the basic credit contract may not specify rates, fees and other information that constitutes pricing information as defined in § 226.58(b)(7); instead, such information may be provided to the cardholder in a separate document sent along with the card. However, this information nevertheless constitutes part of the agreement for purposes of § 226.58.

2. *Provisions contained in separate documents included.* A credit card agreement is defined as the written document or documents evidencing the terms of the legal obligation, or the prospective legal obligation, between a card issuer and a consumer for a credit card account under an open-end (not home-secured) consumer credit plan. An agreement therefore may consist of several documents that, taken together, define the legal obligation between the issuer and consumer. For example, provisions that mandate arbitration or allow an issuer to unilaterally alter the terms of the card issuer’s or consumer’s obligation are part of the agreement even if they are provided to the consumer in a document separate from the basic credit contract.

##### 58(b)(2) Amends.

1. *Substantive changes.* A change to an agreement is substantive, and therefore is deemed an amendment of the agreement, if it alters the rights or obligations of the parties. Section 226.58(b)(2) provides that any change in the pricing information, as defined in § 226.58(b)(7), is deemed to be substantive. Examples of other changes that generally would be considered substantive include: (i) Addition or deletion of a provision giving the issuer or consumer a right under the agreement, such as a clause that allows an issuer to unilaterally change the terms of an agreement; (ii) addition or deletion of a provision giving the issuer or consumer an obligation under the agreement, such as a clause requiring the consumer to pay an additional fee; (iii) changes that may affect the cost of credit to the consumer, such as changes in a provision describing how the minimum payment will be calculated; (iv) changes that may affect how the terms of the agreement are construed or applied, such as changes in a choice-of-law provision; and (v) changes that may affect the parties to whom the agreement may apply, such as provisions regarding authorized users or assignment of the agreement.

2. *Non-substantive changes.* Changes that generally would not be considered substantive include, for example: (i) Correction of typographical errors that do not affect the meaning of any terms of the agreement; (ii) changes to the card issuer’s corporate name, logo, or tagline; (iii) changes to the format of the agreement, such as conversion to a booklet from a full-sheet format, changes in font, or changes in margins; (iv) changes to the name of the credit card to which the program applies; (v) reordering sections of the agreement without affecting the meaning of any terms of the agreement; (vi) adding, removing, or modifying a table of contents or index; and (vii) changes to titles, headings, section numbers, or captions.

##### 58(b)(4) Card issuer.

1. *Card issuer clarified.* Section 226.58(b)(4) provides that, for purposes of § 226.58, card issuer or issuer means the entity to which a consumer is legally obligated, or would be legally obligated, under the terms of a credit card agreement. For example, Bank X and Bank Y work together to issue credit cards. A consumer that obtains a credit card issued pursuant to this arrangement between Bank X and Bank Y is subject to an agreement that states “This is an agreement between you, the consumer, and Bank X that governs the terms of your Bank Y Credit Card.” The card issuer in this example is Bank X, because the agreement creates a legally enforceable obligation between the consumer and Bank X. Bank X is the issuer even if the consumer applied for the card through a link on Bank Y’s Web site and the cards prominently feature the Bank Y logo on the front of the card.

2. *Use of third-party service providers.* An institution that is the card issuer as defined in § 226.58(b)(4) has a legal obligation to comply with the requirements of § 226.58. However, a card issuer generally may use a third-party service provider to satisfy its obligations under § 226.58, provided that the issuer acts in accordance with regulatory

guidance regarding use of third-party service providers and other applicable regulatory guidance. In some cases, an issuer may wish to arrange for the institution with which it partners to issue credit cards to fulfill the requirements of § 226.58 on the issuer’s behalf. For example, Retailer and Bank work together to issue credit cards. Under the § 226.58(b)(4) definition, Bank is the issuer of these credit cards for purposes of § 226.58. However, Retailer services the credit card accounts, including mailing account opening materials and periodic statements to cardholders. While Bank is responsible for ensuring compliance with § 226.58, Bank may arrange for Retailer (or another appropriate third-party service provider) to submit credit card agreements to the Board under § 226.58 on Bank’s behalf. Bank must comply with regulatory guidance regarding use of third-party service providers and other applicable regulatory guidance.

3. *Partner institution Web sites.* As explained in comments 58(d)–2 and 58(e)–3, if an issuer provides cardholders with access to specific information about their individual accounts, such as balance information or copies of statements, through a third-party Web site, the issuer is deemed to maintain that Web site for purposes of § 226.58. Such a Web site is deemed to be maintained by the issuer for purposes of § 226.58 even where, for example, an unaffiliated entity designs the Web site and owns and maintains the information technology infrastructure that supports the Web site, cardholders with credit cards from multiple issuers can access individual account information through the same Web site, and the Web site is not labeled, branded, or otherwise held out to the public as belonging to the issuer. A partner institution’s Web site is an example of a third-party Web site that may be deemed to be maintained by the issuer for purposes of § 226.58. For example, Retailer and Bank work together to issue credit cards. Under the § 226.58(b)(4) definition, Bank is the issuer of these credit cards for purposes of § 226.58. Bank does not have a Web site. However, cardholders can access information about their individual accounts, such as balance information and copies of statements, through a Web site maintained by Retailer. Retailer designs the Web site and owns and maintains the information technology infrastructure that supports the Web site. The Web site is branded and held out to the public as belonging to Retailer. Because cardholders can access information about their individual accounts through this Web site, the Web site is deemed to be maintained by Bank for purposes of § 226.58. Bank therefore may comply with § 226.58(d) by ensuring that agreements offered to the public are posted on Retailer’s Web site in accordance with § 226.58(d). Bank may comply with § 226.58(e) by ensuring that cardholders can request copies of their individual agreements through Retailer’s Web site in accordance with § 226.58(e)(1). Bank need not create and maintain a Web site branded and held out to the public as belonging to Bank in order to comply with §§ 226.58(d) and (e) as long as Bank ensures that Retailer’s Web site complies with these sections.

In addition, § 226.58(d)(1) provides that, with respect to an agreement offered solely for accounts under one or more private label credit card plans, an issuer may comply with § 226.58(d) by posting the agreement on the publicly available Web site of at least one of the merchants at which credit cards issued under each private label credit card plan with 10,000 or more open accounts may be used. This rule is not conditioned on cardholders' ability to access account-specific information through the merchant's Web site.

*58(b)(5) Offers.*

1. *Cards offered to limited groups.* A card issuer is deemed to offer a credit card agreement to the public even if the issuer solicits, or accepts applications from, only a limited group of persons. For example, a card issuer may market affinity cards to students and alumni of a particular educational institution, or may solicit only high-net-worth individuals for a particular card; in these cases, the agreement would be considered to be offered to the public. Similarly, agreements for credit cards issued by a credit union are considered to be offered to the public even though such cards are available only to credit union members.

2. *Individualized agreements.* A card issuer is deemed to offer a credit card agreement to the public even if the terms of the agreement are changed immediately upon opening of an account to terms not offered to the public.

*58(b)(6) Open account.*

1. *Open account clarified.* The definition of open account includes a credit card account under an open-end (not home-secured) consumer credit plan if either: (i) The cardholder can obtain extensions of credit on the account; or (ii) there is an outstanding balance on the account that has not been charged off. Under this definition, an account that meets either of these criteria is considered to be open even if the account is inactive. Similarly, if an account has been closed for new activity (for example, due to default by the cardholder), but the cardholder is still making payments to pay off the outstanding balance, the account is considered open.

*58(b)(8) Private label credit card account and private label credit card plan.*

1. *Private label credit card account.* The term private label credit card account means a credit card account under an open-end (not home-secured) consumer credit plan with a credit card that can be used to make purchases only at a single merchant or an affiliated group of merchants. This term applies to any such credit card account, regardless of whether it is issued by the merchant or its affiliate or by an unaffiliated third party.

2. *Co-branded credit cards.* The term private label credit card account does not include accounts with so-called co-branded credit cards. Credit cards that display the name, mark, or logo of a merchant or affiliated group of merchants as well as the mark, logo, or brand of payment network are generally referred to as co-branded cards. While these credit cards may display the brand of the merchant or affiliated group of merchants as the dominant brand on the card, such credit cards are usable at any

merchant that participates in the payment network. Because these credit cards can be used at multiple unaffiliated merchants, accounts with such credit cards are not considered private label credit card accounts under § 226.58(b)(8).

3. *Affiliated group of merchants.* The term "affiliated group of merchants" means two or more affiliated merchants or other persons that are related by common ownership or common corporate control. For example, the term would include franchisees that are subject to a common set of corporate policies or practices under the terms of their franchise licenses. The term also applies to two or more merchants or other persons that agree among each other, by contract or otherwise, to accept a credit card bearing the same name, mark, or logo (other than the mark, logo, or brand of a payment network), for the purchase of goods or services solely at such merchants or persons. For example, several local clothing retailers jointly agree to issue credit cards called the "Main Street Fashion Card" that can be used to make purchases only at those retailers. For purposes of this section, these retailers would be considered an affiliated group of merchants.

4. *Private label credit card plan.* Which credit card accounts issued by a particular issuer constitute a private label credit card plan is determined by where the credit cards can be used. All of the private label credit card accounts issued by a particular card issuer with credit cards usable at the same merchant or affiliated group of merchants constitute a single private label credit card plan, regardless of whether the rates, fees, or other terms applicable to the individual credit card accounts differ. For example, a card issuer has 3,000 open private label credit card accounts with credit cards usable only at Merchant A and 5,000 open private label credit card accounts with credit cards usable only at Merchant B and its affiliates. The card issuer has two separate private label credit card plans, as defined by § 226.58(b)(8)—one plan consisting of 3,000 open accounts with credit cards usable only at Merchant A and another plan consisting of 5,000 open accounts with credit cards usable only at Merchant B and its affiliates.

The example above remains the same regardless of whether (or the extent to which) the terms applicable to the individual open accounts differ. For example, assume that, with respect to the card issuer's 3,000 open accounts with credit cards usable only at Merchant A in the example above, 1,000 of the open accounts have a purchase APR of 12 percent, 1,000 of the open accounts have a purchase APR of 15 percent, and 1,000 of the open accounts have a purchase APR of 18 percent. All of the 5,000 open accounts with credit cards usable only at Merchant B and Merchant B's affiliates have the same 15 percent purchase APR. The card issuer still has only two separate private label credit card plans, as defined by § 226.58(b)(8). The open accounts with credit cards usable only at Merchant A do not constitute three separate private label credit card plans under § 226.58(b)(8), even though the accounts are subject to different terms.

*58(c) Submission of agreements to Board.*

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*58(c)(3) Amended agreements.*

1. *No requirement to resubmit agreements not amended.* Under § 226.58(c)(3), if a credit card agreement has been submitted to the Board, the agreement has not been amended, and the card issuer continues to offer the agreement to the public, no additional submission regarding that agreement is required. For example, a credit card issuer begins offering an agreement in October and submits the agreement to the Board the following January 31, as required by § 226.58(c)(1). As of March 31, the card issuer has not amended the agreement and is still offering the agreement to the public. The card issuer is not required to submit anything to the Board regarding that agreement by April 30.

2. *Submission of amended agreements.* If a card issuer amends a credit card agreement previously submitted to the Board, § 226.58(c)(3) requires the card issuer to submit the entire amended agreement to the Board. The issuer must submit the amended agreement to the Board by the first quarterly submission deadline after the last day of the calendar quarter in which the change became effective. However, the issuer is required to submit the amended agreement to the Board only if the issuer offered the amended agreement to the public as of the last business day of the calendar quarter in which the change became effective. For example, a card issuer submits an agreement to the Board on October 31. On November 15, the issuer changes the balance computation method used under the agreement. Because an element of the pricing information has changed, the agreement has been amended for purposes of § 226.58(c)(3). On December 31, the last business day of the calendar quarter in which the change in the balance computation method became effective, the issuer still offers the agreement to the public as amended on November 15. The issuer must submit the entire amended agreement to the Board no later than January 31.

3. *Agreements amended but no longer offered to the public.* A card issuer should submit an amended agreement to the Board under § 226.58(c)(3) only if the issuer offered the amended agreement to the public as of the last business day of the calendar quarter in which the amendment became effective. Agreements that are not offered to the public as of the last day of the calendar quarter should not be submitted to the Board. For example, on December 31 a card issuer offers two agreements, Agreement A and Agreement B. The issuer submits these agreements to the Board by January 31 as required by § 226.58. On February 15, the issuer amends both Agreement A and Agreement B. On February 28, the issuer stops offering Agreement A to the public. On March 15, the issuer amends Agreement B a second time. As a result, on March 31, the last business day of the calendar quarter, the issuer offers to the public one agreement—Agreement B as amended on March 15. By the April 30 quarterly submission deadline, the issuer must: (1) Notify the Board that it is withdrawing Agreement A because Agreement A is no longer offered to the public; and (2) submit to the Board Agreement B as amended on March 15. The

issuer should not submit to the Board either Agreement A as amended on February 15 or the earlier version of Agreement B (as amended on February 15), as neither was offered to the public on March 31, the last business day of the calendar quarter.

4. *Change-in-terms notices not permissible.* Section 226.58(c)(3) requires that if an agreement previously submitted to the Board is amended, the card issuer must submit the entire revised agreement to the Board. A card issuer may not fulfill this requirement by submitting a change-in-terms or similar notice covering only the terms that have changed. In addition, amendments must be integrated into the text of the agreement (or the addenda described in § 226.58(c)(8)), not provided as separate riders. For example, a card issuer changes the purchase APR associated with an agreement the issuer has previously submitted to the Board. The purchase APR for that agreement was included in the addendum of pricing information, as required by § 226.58(c)(8). The card issuer may not submit a change-in-terms or similar notice reflecting the change in APR, either alone or accompanied by the original text of the agreement and original pricing information addendum. Instead, the card issuer must revise the pricing information addendum to reflect the change in APR and submit to the Board the entire text of the agreement and the entire revised addendum, even though no changes have been made to the provisions of the agreement and only one item on the pricing information addendum has changed.

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58(d) *Posting of agreements offered to the public.*

1. *Requirement applies only to agreements submitted to the Board.* Card issuers are only required to post and maintain on their publicly available Web site the credit card agreements that the card issuer must submit to the Board under § 226.58(c). If, for example, a card issuer is not required to submit any agreements to the Board because the card issuer qualifies for the de minimis exception under § 226.58(c)(5), the card issuer is not required to post and maintain any agreements on its Web site under § 226.58(d). Similarly, if a card issuer is not required to submit a specific agreement to the Board, such as an agreement that qualifies for the private label exception under § 226.58(c)(6), the card issuer is not required to post and maintain that agreement under § 226.58(d) (either on the card issuer's publicly available Web site or on the publicly available Web sites of merchants at which private label credit cards can be used). (The card issuer in both of these cases is still required to provide each individual cardholder with access to his or her specific credit card agreement under § 226.58(e) by posting and maintaining the agreement on the card issuer's Web site or by providing a copy of the agreement upon the cardholder's request.)

2. *Card issuers that do not otherwise maintain Web sites.* Unlike § 226.58(e), § 226.58(d) does not include a special rule for card issuers that do not otherwise maintain a Web site. If a card issuer is required to submit one or more agreements to the Board

under § 226.58(c), that card issuer must post those agreements on a publicly available Web site it maintains (or, with respect to an agreement for a private label credit card, on the publicly available Web site of at least one of the merchants at which the card may be used, as provided in § 226.58(d)(1)).

If an issuer provides cardholders with access to specific information about their individual accounts, such as balance information or copies of statements, through a third-party Web site, the issuer is considered to maintain that Web site for purposes of § 226.58. Such a third-party Web site is deemed to be maintained by the issuer for purposes of § 226.58(d) even where, for example, an unaffiliated entity designs the Web site and owns and maintains the information technology infrastructure that supports the Web site, cardholders with credit cards from multiple issuers can access individual account information through the same Web site, and the Web site is not labeled, branded, or otherwise held out to the public as belonging to the issuer. Therefore, issuers that provide cardholders with access to account-specific information through a third-party Web site can comply with § 226.58(d) by ensuring that the agreements the issuer submits to the Board are posted on the third-party Web site in accordance with § 226.58(d). (In contrast, the § 226.58(d)(1) rule regarding agreements for private label credit cards is not conditioned on cardholders' ability to access account-specific information through the merchant's Web site.)

3. *Private label credit card plans.* Section 226.58(d) provides that, with respect to an agreement offered solely for accounts under one or more private label credit card plans, a card issuer may comply by posting and maintaining the agreement on the Web site of at least one of the merchants at which the cards issued under each private label credit card plan with 10,000 or more open accounts may be used. For example, a card issuer has 100,000 open private label credit card accounts. Of these, 75,000 open accounts have credit cards usable only at Merchant A and 25,000 open accounts have credit cards usable only at Merchant B and Merchant B's affiliates, Merchants C and D. The card issuer offers to the public a single credit card agreement that is offered for both of these types of accounts and is not offered for any other type of account.

The card issuer is required to submit the agreement to the Board under § 226.58(c)(1). (The card issuer has more than 10,000 open accounts, so the § 226.58(c)(5) de minimis exception does not apply. The agreement is offered solely for two different private label credit card plans (i.e., one plan consisting of the accounts with credit cards usable at Merchant A and one plan consisting of the accounts with credit cards usable at Merchant B and its affiliates, Merchants C and D), but both of these plans have more than 10,000 open accounts, so the § 226.58(c)(6) private label credit card exception does not apply. Finally, the agreement is not offered solely in connection with a product test by the card issuer, so the § 226.58(c)(7) product test exception does not apply.)

Because the card issuer is required to submit the agreement to the Board under § 226.58(c)(1), the card issuer is required to post and maintain the agreement on the card issuer's publicly available Web site under § 226.58(d). However, because the agreement is offered solely for accounts under one or more private label credit card plans, the card issuer may comply with § 226.58(d) in either of two ways. First, the card issuer may comply by posting and maintaining the agreement on the card issuer's own publicly available Web site. Alternatively, the card issuer may comply by posting and maintaining the agreement on the publicly available Web site of Merchant A and the publicly available Web site of at least one of Merchants B, C and D. It would not be sufficient for the card issuer to post the agreement on Merchant A's Web site alone because § 226.58(d) requires the card issuer to post the agreement on the publicly available Web site of "at least one of the merchants at which cards issued under each private label credit card plan may be used" (emphasis added).

In contrast, assume that a card issuer has 100,000 open private label credit card accounts. Of these, 5,000 open accounts have credit cards usable only at Merchant A and 95,000 open accounts have credit cards usable only at Merchant B and Merchant B's affiliates, Merchants C and D. The card issuer offers to the public a single credit card agreement that is offered for both of these types of accounts and is not offered for any other type of account.

The card issuer is required to submit the agreement to the Board under § 226.58(c)(1). (The card issuer has more than 10,000 open accounts, so the § 226.58(c)(5) de minimis exception does not apply. The agreement is offered solely for two different private label credit card plans (i.e., one plan consisting of the accounts with credit cards usable at Merchant A and one plan consisting of the accounts with credit cards usable at Merchant B and its affiliates, Merchants C and D), but one of these plans has more than 10,000 open accounts, so the § 226.58(c)(6) private label credit card exception does not apply. Finally, the agreement is not offered solely in connection with a product test by the card issuer, so the § 226.58(c)(7) product test exception does not apply.)

Because the card issuer is required to submit the agreement to the Board under § 226.58(c)(1), the card issuer is required to post and maintain the agreement on the card issuer's publicly available Web site under § 226.58(d). However, because the agreement is offered solely for accounts under one or more private label credit card plans, the card issuer may comply with § 226.58(d) in either of two ways. First, the card issuer may comply by posting and maintaining the agreement on the card issuer's own publicly available Web site. Alternatively, the card issuer may comply by posting and maintaining the agreement on the publicly available Web site of at least one of Merchants B, C and D. The card issuer is not required to post and maintain the agreement on the publicly available Web site of Merchant A because the card issuer's private label credit card plan consisting of accounts

with cards usable only at Merchant A has fewer than 10,000 open accounts.

*58(e) Agreements for all open accounts.*

1. *Requirement applies to all open accounts.* The requirement to provide access to credit card agreements under § 226.58(e) applies to all open credit card accounts, regardless of whether such agreements are required to be submitted to the Board pursuant to § 226.58(c) (or posted on the card issuer's Web site pursuant to § 226.58(d)). For example, a card issuer that is not required to submit agreements to the Board because it qualifies for the de minimis exception under § 226.58(c)(5) would still be required to provide cardholders with access to their specific agreements under § 226.58(e). Similarly, an agreement that is no longer offered to the public would not be required to be submitted to the Board under § 226.58(c), but would still need to be provided to the cardholder to whom it applies under § 226.58(e).

2. *Readily available telephone line.* Section 226.58(e) provides that card issuers that provide copies of cardholder agreements upon request must provide the cardholder with the ability to request a copy of their agreement by calling a readily available telephone line. To satisfy the readily available standard, the financial institution must provide enough telephone lines so that consumers get a reasonably prompt response. The institution need only provide telephone service during normal business hours. Within its primary service area, an institution must provide a local or toll-free telephone number. It need not provide a toll-free number or accept collect long-distance calls from outside the area where it normally conducts business.

3. *Issuers without interactive Web sites.* Section 226.58(e)(2) provides that a card issuer that does not maintain a Web site from which cardholders can access specific information about their individual accounts is not required to provide a cardholder with the ability to request a copy of the agreement by using the card issuer's Web site. A card issuer without a Web site of any kind could comply by disclosing the telephone number on each periodic statement; a card issuer with a non-interactive Web site could comply in the same way, or alternatively could comply by displaying the telephone number on the card issuer's Web site. An issuer is considered to maintain an interactive Web site for purposes of the § 226.58(e)(2) special rule if the issuer provide cardholders with access to specific information about their individual accounts, such as balance information or copies of statements, through a third-party interactive Web site. Such a Web site is deemed to be maintained by the issuer for purposes of § 226.58(e)(2) even where, for example, an unaffiliated entity designs the Web site and owns and maintains the information technology infrastructure that supports the Web site, cardholders with credit cards from multiple issuers can access individual account information through the same Web site, and the Web site is not labeled, branded, or otherwise held out to the public as belonging to the issuer. An issuer that provides cardholders with access to specific information about their individual

accounts through such a Web site is not permitted to comply with the special rule in § 226.58(e)(2). Instead, such an issuer must comply with § 226.58(e)(1).

4. *Deadline for providing requested agreements clarified.* Sections 226.58(e)(1)(ii) and (e)(2) require that credit card agreements provided upon request must be sent to the cardholder or otherwise made available to the cardholder in electronic or paper form no later than 30 days after the cardholder's request is received. For example, if a card issuer chooses to respond to a cardholder's request by mailing a paper copy of the cardholder's agreement, the card issuer must mail the agreement no later than 30 days after receipt of the cardholder's request. Alternatively, if a card issuer chooses to respond to a cardholder's request by posting the cardholder's agreement on the card issuer's Web site, the card issuer must post the agreement on its Web site no later than 30 days after receipt of the cardholder's request. Section 226.58(e)(3)(v) provides that a card issuer may provide cardholder agreements in either electronic or paper form regardless of the form of the cardholder's request.

*§ 226.59—Reevaluation of Rate Increases*

*59(a) General rule.*

*59(a)(1) Evaluation of increased rate.*

1. *Types of rate increases covered.* Section 226.59(a) applies both to increases in annual percentage rates imposed on a consumer's account based on that consumer's credit risk or other circumstances specific to that consumer and to increases in annual percentage rates imposed based on factors that are not specific to the consumer, such as changes in market conditions or the issuer's cost of funds.

2. *Rate increases actually imposed.* Under § 226.59(a), a card issuer must review changes in factors only if the increased rate is actually imposed on the consumer's account. For example, if a card issuer increases the penalty rate for a credit card account under an open-end (not home-secured) consumer credit plan and the consumer's account has no balances that are currently subject to the penalty rate, the card issuer is required to provide a notice pursuant to § 226.9(c) of the change in terms, but the requirements of § 226.59 do not apply. However, if the consumer's account later becomes subject to the penalty rate, the card issuer is required to provide a notice pursuant to § 226.9(g) and the requirements of § 226.59 begin to apply upon imposition of the penalty rate. Similarly, if a card issuer raises the cash advance rate applicable to a consumer's account but the consumer engages in no cash advance transactions to which that increased rate is applied, the card issuer is required to provide a notice pursuant to § 226.9(c) of the change in terms, but the requirements of § 226.59 do not apply. If the consumer subsequently engages in a cash advance transaction, the requirements of § 226.59 begin to apply at that time.

3. *Change in type of rate.* i. *Generally.* A change from a variable rate to a non-variable rate or from a non-variable rate to a variable rate is not a rate increase for purposes of

§ 226.59, if the rate in effect immediately prior to the change in type of rate is equal to or greater than the rate in effect immediately after the change. For example, a change from a variable rate of 15.99% to a non-variable rate of 15.99% is not a rate increase for purposes of § 226.59 at the time of the change. See § 226.55 for limitations on the permissibility of changing from a non-variable rate to a variable rate.

ii. *Change from non-variable rate to variable rate.* A change from a non-variable to a variable rate constitutes a rate increase for purposes of § 226.59 if the variable rate exceeds the non-variable rate that would have applied if the change in type of rate had not occurred. For example, assume a new credit card account under an open-end (not home-secured) consumer credit plan is opened on January 1 of year 1 and that a non-variable annual percentage rate of 12% applies to all transactions on the account. On January 1 of year 2, upon 45 days' advance notice pursuant to § 226.9(c)(2), the rate on all new transactions is changed to a variable rate that is currently 12% and is determined by adding a margin of 10 percentage points to a publicly-available index not under the card issuer's control. The change from the 12% non-variable rate to the 12% variable rate on January 1 of year 2 is not a rate increase for purposes of § 226.59(a). On April 1 of year 2, the value of the variable rate increases to 12.5%. The increase in the rate from 12% to 12.5% is a rate increase for purposes of § 226.59, and the card issuer must begin periodically conducting reviews of the account pursuant to § 226.59. The increase that must be evaluated for purposes of § 226.59 is the increase from a non-variable rate of 12% to a variable rate of 12.5%.

iii. *Change from variable rate to non-variable rate.* A change from a variable to a non-variable rate constitutes a rate increase for purposes of § 226.59 if the non-variable rate exceeds the variable rate that would have applied if the change in type of rate had not occurred. For example, assume a new credit card account under an open-end (not home-secured) consumer credit plan is opened on January 1 of year 1 and that a variable annual percentage rate that is currently 15% and is determined by adding a margin of 10 percentage points to a publicly-available index not under the card issuer's control applies to all transactions on the account. On January 1 of year 2, upon 45 days' advance notice pursuant to § 226.9(c)(2), the rate on all existing balances and new transactions is changed to a non-variable rate that is currently 15%. The change from the 15% variable rate to the 15% non-variable rate on January 1 of year 2 is not a rate increase for purposes of § 226.59(a). On April 1 of year 2, the value of the variable rate that would have applied to the account decreases to 12.5%. Accordingly, on April 1 of year 2, the non-variable rate of 15% exceeds the 12.5% variable rate that would have applied but for the change in type of rate. At this time, the change to the non-variable rate of 15% constitutes a rate increase for purposes of § 226.59, and the card issuer must begin periodically conducting reviews of the account pursuant to § 226.59. The increase

that must be evaluated for purposes of § 226.59 is the increase from a variable rate of 12.5% to a non-variable rate of 15%.

4. *Rate increases prior to effective date of rule.* For increases in annual percentage rates made on or after January 1, 2009, and prior to August 22, 2010, § 226.59(a) requires the card issuer to review the factors described in § 226.59(d) and reduce the rate, as appropriate, if the rate increase is of a type for which 45 days' advance notice would currently be required under § 226.9(c)(2) or (g). For example, 45 days' notice is not required under § 226.9(c)(2) if the rate increase results from the increase in the index by which a properly-disclosed variable rate is determined in accordance with § 226.9(c)(2)(v)(C) or if the increase occurs upon expiration of a specified period of time and disclosures complying with § 226.9(c)(2)(v)(B) have been provided. The requirements of § 226.59 do not apply to such rate increases.

5. *Amount of rate decrease.* i. *General.* Even in circumstances where a rate reduction is required, § 226.59 does not require that a card issuer decrease the rate that applies to a credit card account to the rate that was in effect prior to the rate increase subject to § 226.59(a). The amount of the rate decrease that is required must be determined based upon the card issuer's reasonable policies and procedures under § 226.59(b) for consideration of factors described in § 226.59(a) and (d). For example, assume a consumer's rate on new purchases is increased from a variable rate of 15.99% to a variable rate of 23.99% based on the consumer's making a required minimum periodic payment five days late. The consumer makes all of the payments required on the account on time for the six months following the rate increase. Assume that the card issuer evaluates the account by reviewing the factors on which the increase in an annual percentage rate was originally based, in accordance with § 226.59(d)(1)(i). The card issuer is not required to decrease the consumer's rate to the 15.99% that applied prior to the rate increase. However, the card issuer's policies and procedures for performing the review required by § 226.59(a) must be reasonable, as required by § 226.59(b), and must take into account any reduction in the consumer's credit risk based upon the consumer's timely payments.

ii. *Change in type of rate.* If the rate increase subject to § 226.59 involves a change from a variable rate to a non-variable rate or from a non-variable rate to a variable rate, § 226.59 does not require that the issuer reinstate the same type of rate that applied prior to the change. However, the amount of any rate decrease that is required must be determined based upon the card issuer's reasonable policies and procedures under § 226.59(b) for consideration of factors described in § 226.59(a) and (d).

\* \* \* \* \*

59(d) Factors.

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6. *Multiple rate increases between January 1, 2009 and February 21, 2010.* i. *General.* Section 226.59(d)(2) applies if an issuer increased the rate applicable to a credit card account under an open-end (not home-

secured) consumer credit plan between January 1, 2009 and February 21, 2010, and the increase was not based solely upon factors specific to the consumer. In some cases, a credit card account may have been subject to multiple rate increases during the period from January 1, 2009 to February 21, 2010. Some such rate increases may have been based solely upon factors specific to the consumer, while others may have been based on factors not specific to the consumer, such as the issuer's cost of funds or market conditions. In such circumstances, when conducting the first two reviews required under § 226.59, the card issuer may separately review: (i) Rate increases imposed based on factors not specific to the consumer, using the factors described in § 226.59(d)(1)(ii) (as required by § 226.59(d)(2)); and (ii) rate increases imposed based on consumer-specific factors, using the factors described in § 226.59(d)(1)(i). If the review of factors described in § 226.59(d)(1)(i) indicates that it is appropriate to continue to apply a penalty or other increased rate to the account as a result of the consumer's payment history or other factors specific to the consumer, § 226.59 permits the card issuer to continue to impose the penalty or other increased rate, even if the review of the factors described in § 226.59(d)(1)(ii) would otherwise require a rate decrease.

ii. *Example.* Assume a credit card account was subject to a rate of 15% on all transactions as of January 1, 2009. On May 1, 2009, the issuer increased the rate on existing balances and new transactions to 18%, based upon market conditions or other factors not specific to the consumer or the consumer's account. Subsequently, on September 1, 2009, based on a payment that was received five days after the due date, the issuer increased the applicable rate on existing balances and new transactions from 18% to a penalty rate of 25%. When conducting the first review required under § 226.59, the card issuer reviews the rate increase from 15% to 18% using the factors described in § 226.59(d)(1)(ii) (as required by § 226.59(d)(2)), and separately but concurrently reviews the rate increase from 18% to 25% using the factors described in paragraph § 226.59(d)(1)(i). The review of the rate increase from 15% to 18% based upon the factors described in § 226.59(d)(1)(ii) indicates that a similarly situated new consumer would receive a rate of 17%. The review of the rate increase from 18% to 25% based upon the factors described in § 226.59(d)(1)(i) indicates that it is appropriate to continue to apply the 25% penalty rate based upon the consumer's late payment. Section 226.59 permits the rate on the account to remain at 25%.

59(f) *Termination of obligation to review factors.*

1. *Revocation of temporary rates.* i. *General.* If an annual percentage rate is increased due to revocation of a temporary rate, § 226.59(a) requires that the card issuer periodically review the increased rate. In contrast, if the rate increase results from the expiration of a temporary rate previously disclosed in accordance with § 226.9(c)(2)(v)(B), the review requirements

in § 226.59(a) do not apply. If a temporary rate is revoked such that the requirements of § 226.59(a) apply, § 226.59(f) permits an issuer to terminate the review of the rate increase if and when the applicable rate is the same as the rate that would have applied if the increase had not occurred.

ii. *Examples.* Assume that on January 1, 2011, a consumer opens a new credit card account under an open-end (not home-secured) consumer credit plan. The annual percentage rate applicable to purchases is 15%. The card issuer offers the consumer a 10% rate on purchases made between February 1, 2012 and August 1, 2013 and discloses pursuant to § 226.9(c)(2)(v)(B) that on August 1, 2013 the rate on purchases will revert to the original 15% rate. The consumer makes a payment that is five days late in July 2012.

A. Upon providing 45 days' advance notice and to the extent permitted under § 226.55, the card issuer increases the rate applicable to new purchases to 15%, effective on September 1, 2012. The card issuer must review that rate increase under § 226.59(a) at least once each six months during the period from September 1, 2012 to August 1, 2013, unless and until the card issuer reduces the rate to 10%. The card issuer performs reviews of the rate increase on January 1, 2013 and July 1, 2013. Based on those reviews, the rate applicable to purchases remains at 15%. Beginning on August 1, 2013, the card issuer is not required to continue periodically reviewing the rate increase, because if the temporary rate had expired in accordance with its previously disclosed terms, the 15% rate would have applied to purchase balances as of August 1, 2013 even if the rate increase had not occurred on September 1, 2012.

B. Same facts as above except that the review conducted on July 1, 2013 indicates that a reduction to the original temporary rate of 10% is appropriate. Section 226.59(a)(2)(i) requires that the rate be reduced no later than 45 days after completion of the review, or no later than August 15, 2013. Because the temporary rate would have expired prior to the date on which the rate decrease is required to take effect, the card issuer may, at its option, reduce the rate to 10% for any portion of the period from July 1, 2013, to August 1, 2013, or may continue to impose the 15% rate for that entire period. The card issuer is not required to conduct further reviews of the 15% rate on purchases.

C. Same facts as above except that on September 1, 2012 the card issuer increases the rate applicable to new purchases to the penalty rate on the consumer's account, which is 25%. The card issuer conducts reviews of the increased rate in accordance with § 226.59 on January 1, 2013 and July 1, 2013. Based on those reviews, the rate applicable to purchases remains at 25%. The card issuer's obligation to review the rate increase continues to apply after August 1, 2013, because the 25% penalty rate exceeds the 15% rate that would have applied if the temporary rate expired in accordance with its previously disclosed terms. The card issuer's obligation to review the rate terminates if and when the annual percentage rate applicable to purchases is reduced to the 15% rate.

2. *Example—relationship to § 226.59(a).*  
 Assume that on January 1, 2011, a consumer opens a new credit card account under an open-end (not home-secured) consumer credit plan. The annual percentage rate applicable to purchases is 15%. Upon providing 45 days' advance notice and to the extent permitted under § 226.55, the card issuer increases the rate applicable to new purchases to 18%, effective on September 1, 2012. The card issuer conducts reviews of the

increased rate in accordance with § 226.59 on January 1, 2013 and July 1, 2013, based on the factors described in § 226.59(d)(1)(ii). Based on the January 1, 2013 review, the rate applicable to purchases remains at 18%. In the review conducted on July 1, 2013, the card issuer determines that, based on the relevant factors, the rate it would offer on a comparable new account would be 14%. Consistent with § 226.59(f), § 226.59(a) requires that the card issuer reduce the rate

on the existing account to the 15% rate that was in effect prior to the September 1, 2012 rate increase.

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By order of the Board of Governors of the Federal Reserve System, April 8, 2011.

**Robert deV. Frierson,**  
*Deputy Secretary of the Board.*

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